

## LEASE AGREEMENT

## Between

**LINCOLN PO  
RED OAK VILLAGE, L.P.  
a Delaware limited partnership,**

### Landlord

and

**BED BATH & BEYOND INC.,**  
a New York corporation.

### Tenant

**RED OAK VILLAGE**  
San Marcos, Texas

Dated as of: September , 2005

\* \* \* \* \*

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## LEASE AGREEMENT

2 THIS LEASE AGREEMENT ("Lease") is entered into as of September \_\_\_, 2005 by and  
3 between LINCOLN PO RED OAK VILLAGE, L.P., a Delaware limited partnership, having an office  
4 at 3300 Lincoln Plaza, 500 N. Akard Street, Dallas, TX 75201 ("Landlord"), and BED BATH &  
5 BEYOND INC., a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey  
6 07083 ("Tenant").

**WITNESSETH:**

## ARTICLE 1

## BASIC TERMS AND DEFINITIONS

11           Section 1.1. Basic Terms and Definitions. The following terms shall have the meanings set  
12 forth in this Section 1.1 except as otherwise expressly provided herein.

13                   1.1.1 Additional Rent: Any monies which Tenant is required to pay to Landlord  
14 under the terms and conditions of this Lease, other than Fixed Rent.

15                   1.1.2 **Affiliate**: A corporation, partnership, person or other entity which is controlling,  
16 controlled by, or under common control with, Landlord or Tenant, as the case may be. As used herein,  
17 “**control**” shall mean the possession, direct or indirect, of the power to direct or cause the direction of  
18 the management and policies of a person or entity, whether through the ownership of voting securities  
19 or rights, by contract, or otherwise.

20                   1.1.3 Alternate Rent: As defined in and payable in the manner set forth in Exhibit L  
21 attached hereto.

22                   1.1.4 Common Areas: All areas in the Shopping Center which are, from time to time,  
23 available for the joint use and benefit of Tenant and other tenants and occupants of the Shopping  
24 Center, and their respective employees, agents, subtenants, concessionaires, licensees, customers and  
25 other invitees, including, but not limited to, any and all parking areas, parking spaces, driveways, truck  
26 serviceways, passageways, sidewalks, entrances, exits, lighting facilities, courts, landscaped areas,  
27 retention or detention areas, and common utility lines.

### 1.1.5 Common Areas Charges: As defined in Section 5.1 hereof.

29 1.1.6 Delivery Date: As defined in Section 2.3 hereof.

30 1.1.7 Effective Date: The date hereof.

31                   1.1.8 Event of Default: As defined in Section 16.1 hereof.

32                   1.1.9 Excused Periods: Periods during which Tenant's failure to conduct the  
33 operations of its business or any other business: (x) resulted from alterations or renovations being  
34 performed in and to the Premises, (y) was caused by damage or destruction, eminent domain  
35 proceedings or actions, or *Force Majeure*, or (z) was caused by any act or omission of Landlord, or its  
36 employees, agents, or contractors.

37                   1.1.10 Exhibits. The exhibits listed in the Table of Contents annexed to this Lease  
38 have been agreed to by the parties and attached hereto, it being the intention of the parties that they  
39 shall become a binding part of this Lease as if fully set forth herein.

42 (a) For the period commencing on the Rent Commencement Date and  
43 ending on the last day of the "Initial Term" (defined in Subsection 1.1.43 below), at the rate of One  
44 Hundred Thirty-Eight Thousand and No/100 (\$138,000.00) Dollars per year [based on Six and No/100  
45 (\$6.00) Dollars per square foot of Floor Area in the Premises];

(b) In the event Tenant exercises the first Renewal Option, for the first five (5) year Renewal Period, at the rate of One Hundred Forty-Nine Thousand Five Hundred and No/100 (\$149,500.00) Dollars per year [based on Six and 50/100 (\$6.50) Dollars per square foot of Floor Area in the Premises];

5 (c) In the event Tenant exercises the second Renewal Option, for the second  
6 five (5) year Renewal Period, at the rate of One Hundred Sixty-One Thousand and No/100  
7 (\$161,000.00) Dollars per year [based on Seven and No/100 (\$7.00) Dollars per square foot of Floor  
8 Area in the Premises]; and

9 (d) In the event Tenant exercises the third Renewal Option, for the third five  
10 (5) year Renewal Period, at the rate of One Hundred Seventy-Two Thousand Five Hundred and  
11 No/100 (\$172,500.00) Dollars per year [based on Seven and 50/100 (\$7.50) Dollars per square foot of  
12 Floor Area in the Premises].

13                   1.1.12 Floor Area: The actual number of square feet of space contained on all floors  
14 within any building area in the Shopping Center (including the Premises) or the Project and, with  
15 respect to exterior areas, including all exterior areas leased to or exclusively used by one or more  
16 tenants (other than [exterior] loading dock areas, trash compactor areas, and trash container areas). All  
17 measurements pursuant to this Subsection shall be from the exterior of outside walls or store front  
18 and/or to the centerline of any common walls, but in no event shall Floor Area within either the  
19 Premises or the remainder of the Shopping Center or the Project include any non-selling or storage  
20 space areas within any mezzanine, lower floor, second floor or, except as set forth above, any exterior  
21 areas.

22 1.1.13 *Force Majeure*: As defined in Section 23.4 hereof.

23                   1.1.14 **Ground Lessor:** The landlord under any existing or future ground or underlying  
24 leases encumbering or affecting all or any part of the Shopping Center.

### 1.1.15 Intentionally Omitted.

26 1.1.16 Hazardous Substances: As defined in Subsection 12.4.1 hereof.

27 1.1.17 Inducement Tenant: As defined in Subsection 2.3.1 hereof.

28 1.1.18 Landlord: As defined in the preamble and Section 23.11 hereof.

33 1.1.20 Landlord's Work: As defined in Section 3.1 hereof.

34                   1.1.21 Lease Interest Rate: The then effective prime rate as published from time to time  
35                   in the "Money Rates" section of *The Wall Street Journal* (or any successor publication thereto) plus  
36                   two (2%) percent.

37                   1.1.22 Legal Requirements: All laws, statutes, codes, acts, ordinances, judgments,  
38 decrees, authorizations, directions and requirements of, and agreements with, all governmental  
39 departments, commissions, boards, courts, authorities, agencies, officials and officers, which now or at  
40 any time hereafter may be applicable to the Premises, the Shopping Center, or any part(s) thereof.

### 45 1.1.24 Intentionally Omitted.

### 46 1.1.25 Intentionally Omitted.

### 47 1.1.26 Intentionally Omitted.

1                   1.1.27 Permitted Use: The sale at retail of a variety of linens and domestics (including,  
2 but not limited to, sheets, bedspreads, comforters, duvets, pillows, pillow covers, chair pads,  
3 placemats, tablecloths, dish towels, oven mittens and aprons); bathroom items (including, but not  
4 limited to, towels, shower curtains, bathroom rugs, toilet seats, health and beauty care items and  
5 cosmetics, personal care devices and other bathroom appliances and accessories); housewares  
6 (including, but not limited to, kitchen utensils, kitchen appliances and kitchen "gadgets," cleaning  
7 appliances and supplies, cookware, bakeware, dishes and china, glassware, garbage pails, ironing  
8 boards and other laundry items, mops and brooms, candles and candle holders, ready-to-assemble  
9 furniture and artificial flowers); frames and wall art; window treatments; closet, shelving and storage  
10 items; home furnishings; area rugs; wall and floor coverings; furniture (including, without limitation,  
11 mattresses, box springs, bed frames, and bedroom furniture); decorative accessories; photo albums;  
12 photo storage boxes; luggage; books; party supplies; cards and stationery; seasonal items; juvenile  
13 merchandise (including, but not limited to, toys, car seats and safety-proofing items); specialty food  
14 items; food and non-alcoholic beverage services; any and all other items sold or services provided  
15 from time to time in any store owned or operated by Tenant or its Affiliate(s) (the aforementioned  
16 items are hereinafter collectively referred to as the "**Permitted Items**"); and for any other lawful retail  
17 use not specifically prohibited by the provisions of Section 13.1.1 below. In addition, Tenant shall be  
18 permitted to use portions of the Premises for storage and office uses incidental to the Permitted Use.

19                   1.1.28 Premises: Being the area cross-hatched on Exhibit B hereto, having dimensions  
20 as shown on Exhibit B and containing approximately: (i) Twenty-Three Thousand (23,000) square feet  
21 of Floor Area, and (ii) one thousand (1,000) square feet of mezzanine level space for office purposes,  
22 subject to adjustment in accordance with the provisions of Section 3.4 below. In no event shall such  
23 non-selling space (or any space used for fire pump facilities) result in any charge to Tenant by way of  
24 Fixed Rent or any Additional Rent, nor shall such non-selling or fire pump facility space be included in  
25 the determination of Tenant's Pro Rata Share.

26                   1.1.28A Project: The Shopping Center and the area designated as the "Sam's Parcel"  
27 on Exhibit B attached hereto (hereafter referred to as the "**Sam's Parcel**"), collectively initially  
28 containing approximately three hundred thirty-two thousand (332,000) square feet of Floor Area, as  
29 more particularly described in Exhibit A-1 hereto.

30                   1.1.29 Renewal Option: As defined in Section 2.2.2 hereof.

31                   1.1.30 Renewal Period(s): Three (3) successive periods of five (5) years each, as  
32 provided in Section 2.2.2 hereof.

33                   1.1.31 Rent: Fixed Rent and/or Additional Rent.

34                   1.1.32 Rent Commencement Date: As defined in Section 2.2 hereof.

35                   1.1.33 Intentionally Omitted.

36                   1.1.34 Shopping Center: The shopping center commonly known as Red Oak Village  
37 Shopping Center, containing approximately One Hundred Ninety-Seven Thousand (197,000) square  
38 feet of Floor Area, on the property located at the southeast corner of Cottonwood Parkway and the  
39 Interstate Highway 35 frontage road, in San Marcos, Texas, and more particularly described in Exhibit  
40 A hereto. Anything contained in this Lease to the contrary notwithstanding, if Landlord or its Affiliate,  
41 at any time from and after the Delivery Date, holds title to or has control over, by deed, ground lease or  
42 otherwise, the Sam's Parcel (or any portion thereof), then the Sam's Parcel (or such portion thereof)  
43 shall be deemed to be included within the Shopping Center for all purposes and, subject to the  
44 applicable provisions of Section 13.2.4(b) below, Landlord shall comply with its obligations imposed  
45 against the Shopping Center by this Lease regarding the Sam's Parcel (or such applicable portion  
46 thereof) including, without limitation, Section 23.20 below. Landlord shall not change the name of the  
47 Shopping Center without giving at least ninety (90) days prior notice to Tenant, and Landlord shall not  
48 include the name of any tenant (other than Tenant) in the name of the Shopping Center.

49                   1.1.35 Substantially Completed or Substantial Completion: The completion of  
50 specified work at the Shopping Center (including, without limitation, as applicable, Landlord's Work)  
51 to the extent that only "Punch List Items" of such work (defined in Subsection 3.3.3 below) shall not  
52 be completed.

53                   1.1.36 Taxes: As defined in Section 4.3.3 hereof.

1                   1.1.37 Tenant: As defined in the preamble hereof.

2                   1.1.37A Tenant Delays: Any net delays in the Substantial Completion of Landlord's  
3 Work solely and directly and to the extent caused (despite Landlord's diligent efforts in performing  
4 Landlord's Work) by Tenant's or its agents', employees', contractors' or subcontractors' failure or  
5 refusal to act in accordance with the terms of this Lease, provided that Landlord shall have notified  
6 Tenant of such Tenant Delays promptly after Landlord's discovery of its occurrence.

7                   1.1.38 Tenant's Mailing Address: 650 Liberty Avenue, Union, New Jersey 07083,  
8 Attn: Mr. Warren Eisenberg, or such other place and/or to the attention of such other person as Tenant  
9 may notify Landlord from time to time by notice given in accordance with the provisions of Article 18  
10 hereof.

11                   1.1.39 Tenant's Permits: As defined in Section 2.3.1(b) hereof.

12                   1.1.40 Tenant's Property: All of Tenant's personal property, including, without  
13 limitation, phone and alarm systems, satellite antennae, shelving, computers, furniture, cash registers  
14 and customer service counters, specialty lighting, track lighting, millwork, conveyor systems, storage  
15 racks and signage and any and all other personal property of Tenant which is capable of being removed  
16 from the Premises without material damage thereto, but which shall not include electrical systems,  
17 heating, ventilation and air conditioning systems, and other mechanical systems, flooring, carpet,  
18 elevators, standard lighting and wiring installed within the walls of the Premises.

19                   1.1.41 Tenant's Pro Rata Share: A fraction whose numerator is the Floor Area of the  
20 Premises and whose denominator is the Floor Area of the Shopping Center as may be re-determined  
21 any time a building (and/or Floor Area) is added to or removed from the Shopping Center, but in no  
22 event shall Tenant's Pro Rata Share be greater than twelve (12%) percent, unless increased to the  
23 extent provided in Subsection 5.1.3(b) below. Notwithstanding the foregoing, if the Shopping Center  
24 is comprised of more than one (1) tax parcel, then the denominator for determining Tenant's Pro Rata  
25 Share of Taxes may, at Landlord's discretion, be the Floor Area of the tax parcel on which the  
26 Premises are located provided that such tax parcel includes a proportionate amount of Common Areas,  
27 in which event the term "Taxes" (notwithstanding the provisions of Subsection 4.3.3 below) for the  
28 purposes of determining Tenant's Pro Rata Share of Taxes shall mean the Taxes levied or assessed on  
29 such tax parcel (i.e., the tax parcel on which the Premises are located) only. Anything contained in this  
30 Subsection 1.1.41 to the contrary notwithstanding, if Landlord or its Affiliate, at any time from and  
31 after the Delivery Date, holds title to or has control over, by deed, ground lease or otherwise, the Sam's  
32 Parcel (or any portion thereof) or if Landlord is regularly maintaining the Common Areas on any part  
33 of the Sam's Parcel and including the costs of such maintenance (or certain components of such  
34 maintenance) as part of Common Area Charges, then the Tenant's Pro Rata Share of Common Area  
35 Charges (or the aspects of the Common Area Charges that include the cost of maintaining the Sam's  
36 Parcel or any portion thereof) shall be adjusted to be no greater than a percentage determined by  
37 dividing the amount of square feet of Floor Area in the Premises by the total amount of square feet of  
38 Floor Area as shown on Exhibit B for (a) the Shopping Center and (b) the Sam's Parcel (or, if the  
39 Sam's Parcel is subdivided and Landlord or its Affiliate only acquired title to, obtained control over, or  
40 is maintaining a portion of the Sam's Parcel, then this clause (b) shall only include the Floor Area  
41 located on such portion of the Sam's Parcel as shown on Exhibit B). Floor Area shall be deemed  
42 added to or removed from the Shopping Center on the earlier of (i) the date upon which such Floor  
43 Area is Substantially Completed, or (ii) at such time as an assessment for Taxes is made or removed, as  
44 the case may be, with respect to such Floor Area. Within thirty (30) days following written request  
45 from Tenant, Landlord shall certify to Tenant in writing as to the then Floor Area of the Shopping  
46 Center.

47                   1.1.42 Tenant's Work: As defined in Section 3.1 hereof.

48                   1.1.43 Term: A period (the "**Initial Term**") of approximately Ten (10) years  
49 beginning on the Rent Commencement Date and expiring at midnight on the last day of January  
50 following the Tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date, unless the Rent  
51 Commencement Date is February 1, in which event the Expiration Date shall be the day before the  
52 tenth (10<sup>th</sup>) anniversary of the Rent Commencement Date. As used herein: (i) "**Term**" shall refer to the  
53 Initial Term, as the same may be extended by any Renewal Period exercised pursuant to Section 2.2.2  
54 below; and (ii) "**Expiration Date**" shall mean the date on which the Term expires.

1

ARTICLE 2

2

LEASE OF PREMISES, LEASE TERM;  
DELIVERY DATE

3

Section 2.1 Lease of Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises together with any and all rights, benefits, privileges and easements, now or hereafter appurtenant to either or both of the Premises and the Project, arising out of any public or private grant or authority, including, without limitation, the non-exclusive right and easement to use the Common Areas in common with other tenants and occupants of the Project.

4

Section 2.2 Term.

5

2.2.1 Initial Term. Subject to the provisions of this Article 2, the Term of this Lease shall begin on the sixtieth (60th) day following the Delivery Date (the "**Rent Commencement Date**"). The Term shall expire on the Expiration Date, unless earlier terminated as herein provided. When the Rent Commencement Date has been determined, as provided in this Section, Landlord and Tenant shall execute, acknowledge and deliver, each to the other, a written statement in the form attached hereto as Exhibit C specifying the Rent Commencement Date.

6

2.2.2 Renewal Options. Tenant shall have the right and option (hereinafter a "**Renewal Option**") to extend the Initial Term from the date on which it would otherwise expire for three (3) successive renewal periods of five (5) years each (individually, a "**Renewal Period**", and collectively, the "**Renewal Periods**") upon the same terms and conditions as are herein set forth. Each Renewal Option shall be exercisable by notice given to Landlord at least one hundred eighty (180) days prior to the commencement of the applicable Renewal Period(s). In order to prevent the inadvertent failure of Tenant to exercise any of the Renewal Options within the time specified above, the Term of this Lease shall not expire unless and until Tenant fails to exercise a Renewal Option within fifteen (15) days after receiving notice from Landlord that the Renewal Option in question has not been exercised (Landlord's notice shall not be given prior to the 180<sup>th</sup> day prior to the Expiration Date), or unless and until Tenant gives notice to Landlord that it will not be exercising any remaining Renewal Options, whichever shall occur earlier. If Landlord fails to give Tenant such notice prior to the Expiration Date, and Tenant occupies the Premises after the Expiration Date, then Tenant shall remain in possession subject to the provisions of this Lease but without the application of Article 20 hereof. If Landlord then gives Tenant such notice and Tenant exercises its Renewal Option, then the effective date of such exercise shall be retroactive to the Expiration Date.

7

Section 2.3 Delivery Date.

8

2.3.1 Definition. Subject to Landlord's delivery to Tenant of the Delivery Date Notice in accordance with the provisions of Subsection 2.3.2 below and Landlord's timely compliance therewith, Landlord shall be deemed to have delivered possession of the Premises to Tenant at 8:00 a.m. on the date (the "**Delivery Date**") following the day on which all of the following conditions (the "**Delivery Date Conditions**") shall have occurred and Tenant shall have received from Landlord the Delivery Date Certification in accordance with the provisions of Section 2.3.3 below, which shall constitute Landlord's written certification that all of the following shall have occurred:

9

(a) Actual possession of the Premises shall have been delivered to Tenant water-tight, free of Hazardous Substances, in a good, structurally sound condition, with all of Landlord's Work Substantially Completed, which Substantial Completion shall be evidenced by a written certification by Landlord's architect to Tenant.

10

(b) Landlord shall have obtained (and delivered copies thereof to Tenant, upon request) all permits and approvals required from all applicable governmental authorities to enable Tenant to occupy and use the Premises for the conduct of its business in the Premises (exclusive of any business licenses which Tenant may be required to obtain in order to open and operate its specific business and not a general retail business (collectively, "**Tenant's Permits**")), which permits and approvals shall include, without limitation, zoning and building code approvals, environmental requirements, and a permanent certificate of occupancy for the Premises (unless a permanent certificate of occupancy for the Premises cannot be obtained solely as a result of the failure to complete Tenant's Work in the manner required hereunder, in which event: (1) the delivery of a permanent certificate of occupancy for the Premises shall not be a condition to the occurrence of the Delivery Date, (2) the obtaining of a temporary certificate of occupancy shall be a condition to the

1 occurrence of the Delivery Date, and (3) Landlord shall obtain the permanent certificate of occupancy  
2 promptly following the correction or completion of Tenant's Work).

3 (c) The Common Areas, and all of the improvements thereto shown on  
4 Exhibit B hereto shall have been Substantially Completed and operational, and all off-site  
5 improvements (including, without limitation, street, storm drainage, and traffic signalization  
6 improvements) required for the Shopping Center to open for business and for Tenant to receive a  
7 permanent certificate of occupancy shall have been Substantially Completed; Landlord, at its sole cost  
8 and expense, shall have obtained (and delivered copies thereof to Tenant, upon request) all permits and  
9 approvals required from applicable governmental authorities to enable the Common Areas to be  
10 developed, operated, and used for the purposes herein contemplated, which permits and approvals shall  
11 include, without limitation, zoning, building code, environmental requirements, curb cut and site plan  
12 approvals, all permits pertaining to pylon and/or monument signage (and Tenant's panel(s) thereon),  
13 construction, and development and use permits.

14 (d) The representations and warranties of Landlord set forth in  
15 subparagraphs (a) through (i) of Section 12.3 below shall then be true and in effect.

16 (e) A Lease or other occupancy agreement shall have been entered into with  
17 the tenant or occupant set forth below (the "*Inducement Tenant*") on the following terms, for  
18 occupancy of the premises designated for it on Exhibit B; such lease shall not be cancelable by the  
19 Inducement Tenant, except for failure of Landlord to complete the Shopping Center, for injury to or  
20 loss of the premises thereby demised because of fire or other casualty, or for a taking or for other  
21 reasons similar to those for which this Lease is cancelable by Tenant:

Inducement Tenants	Minimum Square-foot Gross Floor Area	Minimum Term
Marshalls	28,000	10 Years

22  
23 Notwithstanding the foregoing, TJ Maxx may be substituted for Marshalls as the Inducement  
24 Tenant (it being understood and agreed that a store operated under any other trade name, no matter  
25 how similar to the trade name "TJ Maxx", shall not be a permitted substitute Inducement Tenant),  
26 provided that such substitute satisfies the requirements set forth above for the Inducement Tenant.

27 (f) Landlord shall have delivered to Tenant, in recordable form: (i) a  
28 subordination, non-disturbance and attornment agreement substantially in the form attached hereto as  
29 Exhibit G executed by each holder of any mortgage or deed of trust encumbering or affecting the  
30 Shopping Center or any portion thereof (it being understood and agreed that this Subsection 2.3.1(f) is  
31 not intended to extend the date by which Landlord is to deliver to Tenant any document(s) required  
32 pursuant to Section 17.3 hereof), and (ii) a fee owner recognition agreement in the form and content  
33 described in clause (b) of Section 17.1 hereof executed by any existing Ground Lessor.

34 (g) The Sam's OEA (hereinafter defined in Section 12.5) is (x) fully  
35 executed and delivered and recorded in Clerk's Office of Hays County, State of Texas, and (y) superior  
36 to all mortgages, deeds of trust and other liens affecting the Shopping Center and the Sam's Parcel; any  
37 third-party approvals required under the Sam's OEA for the performance of Landlord's Work  
38 (including, without limitation, Tenant's elevations and signage, as shown on Exhibit D-1 and Exhibit F  
39 hereto) and Tenant's Work shall have been obtained. In the event that Landlord owns the Sam's Parcel  
40 on the date that all of the Delivery Date Conditions, except for this Subsection 2.3.1(g), are satisfied,  
41 the satisfaction of this Subsection 2.3.1(g) shall not be deemed to be a Delivery Date Condition.

42 (h) In the event that Landlord owns the Sam's Parcel (or any portion thereof)  
43 on the date that all of the Delivery Date Conditions, except for this Subsection 2.3.1(h), are satisfied,  
44 then Landlord shall record a memorandum or short form of this Lease against the Sam's Parcel (or  
45 such applicable portion thereof) in form and substance as either party shall reasonably request.

46 2.3.2 Delivery Date.

47 (a) Landlord shall give Tenant at least one hundred twenty (120) days prior  
48 notice of the Delivery Date (the "*Delivery Date Notice*"), using the form of Delivery Date Notice  
49 attached hereto as Exhibit I. Landlord's delivery of the Delivery Date Notice shall be a condition  
50 precedent to the Rent Commencement Date. Notwithstanding any provision of this Lease to the

1 contrary, in no event shall the Delivery Date be deemed to occur prior to the Delivery Date established  
2 in the Delivery Date Notice.

3 (b) Landlord acknowledges that if it shall fail to satisfy all of the Delivery  
4 Date Conditions by the Delivery Date as established in the Delivery Date Notice, Tenant will sustain  
5 substantial, additional costs and expenses, including, without limitation, storage costs for fixtures,  
6 equipment, and inventory, employee costs during the waiting period, and additional advertising and  
7 promotional costs, the exact amount of which would be impracticable or extremely difficult to  
8 ascertain. If the Delivery Date does not occur by the date established therefor in the Delivery Date  
9 Notice (subject to extensions of the Delivery Date established in the Delivery Date Notice by *Force*  
10 *Majeure*, not to exceed thirty [30] days in the aggregate, occurring after the Delivery Date Notice is  
11 given provided that Landlord shall have notified Tenant of such events of *Force Majeure* promptly  
12 after its occurrence, and subject to the extent of any Tenant Delays occurring after the Delivery Date  
13 Notice is given), then, in addition to any other remedies available to Tenant under this Lease, Tenant  
14 shall be entitled to offset from the initial installment(s) of Rent hereunder, as liquidated reimbursement  
15 to Tenant (and not as a penalty) for all of the aforesaid costs incurred by Tenant, the sum of: (i) [REDACTED]  
16 [REDACTED] Dollars (\$[REDACTED]), plus (ii) [REDACTED] Dollars (\$[REDACTED]) for each day  
17 that the Delivery Date established in the Delivery Date Notice is delayed for reasons other than delays  
18 caused by *Force Majeure* and/or Tenant Delays to the extent permitted above. The foregoing  
19 liquidated reimbursements represent the parties' good faith agreement as to an agreed upon amount  
20 which shall have been incurred by Tenant and which shall otherwise not be susceptible of exact  
21 ascertainment.

22 2.3.3 Delivery Date Certification. Upon the satisfaction of all of the Delivery Date  
23 Conditions, Landlord shall so certify to Tenant, using the form of Delivery Date Certification attached  
24 hereto as Exhibit J.

25 2.3.4 No Waiver. Neither Tenant's acceptance of physical possession of the Premises  
26 nor Tenant's opening of the Premises for business to the public prior to the Delivery Date shall: (i) be  
27 deemed a waiver by Tenant of any of the Delivery Date Conditions, or (ii) relieve Landlord of any  
28 obligation under this Lease, unless such condition or obligation is expressly waived in writing by  
29 Tenant.

30 Section 2.4 Unseasonable Delivery: Slack Period. If, for any reason (including, without  
31 limitation, *Force Majeure*), the Delivery Date occurs during the period commencing on September 1  
32 and ending on the March 31 next following (the "*Slack Period*"), then Tenant shall have, in addition to  
33 any other remedies, the right to:

34 (a) accept delivery of physical possession of the Premises; or

35 (b) defer its acceptance of delivery of physical possession of the Premises to  
36 a later date within the Slack Period, whereupon the Delivery Date shall be deemed to have occurred on  
37 the date that Tenant actually accepts physical possession of the Premises (subject to the other  
38 provisions of this Article 2 and the continuing satisfaction of the Delivery Date Conditions); and

39 in either event, if the Rent Commencement Date occurs before the April 1 next following the Slack  
40 Period, Tenant shall be entitled to pay Alternate Rent in lieu of Fixed Rent for the period commencing  
41 on the Rent Commencement Date and ending on the March 31 next following; any benefit which  
42 Tenant may realize thereby shall constitute a reimbursement to Tenant for certain pre-opening  
43 expenses incurred by Tenant in connection with this Lease. In the event Tenant defers the acceptance  
44 of physical possession of the Premises as set forth in this Section 2.4, the per diem liquidated damages  
45 of \$[REDACTED] payable by Landlord to Tenant under Section 2.3.2(b) shall cease to accrue as of the date  
46 the Delivery Date would have occurred had Tenant not elected to defer acceptance, but shall  
47 recommence on the date later in the Slack Period which Tenant designates for delivery of the Premises  
48 if Landlord fails to deliver the Premises with all Delivery Date Conditions satisfied on such date.

49  
50 Notwithstanding the foregoing provisions of this Section 2.4, if the Delivery Date occurs during the  
51 first fifteen (15) days of the Slack Period (i.e., between September 1 and September 15) solely as a  
52 result of a specific Tenant Delay exceeding fifteen (15) days in duration, then the Delivery Date shall  
53 be determined as if such Tenant Delay had not occurred.

54

1                   Section 2.5    Initial Co-Tenancy Condition.

2                   2.5.1    As used herein, the "***Initial Co-Tenancy Condition***" shall mean that the  
3    Inducement Tenant shall have accepted possession of its entire premises, such premises shall have  
4    been substantially completed, and the Inducement Tenant shall, be open for business.

5                   2.5.2    If, on the Delivery Date, the Initial Co-Tenancy Condition has not been  
6    satisfied, Tenant shall have the right, at its sole option, to:

7                   (a)    accept delivery of physical possession of the Premises; or

8                   (b)    defer its acceptance of delivery of physical possession of the Premises to  
9    a later date (but not later than the date on which the Initial Co-Tenancy Condition is satisfied and  
10    Tenant receives notice from Landlord thereof), whereupon the Delivery Date shall be deemed to have  
11    occurred on the date that Tenant actually accepts physical possession of the Premises (subject to the  
12    other provisions of this Article 2 and the continuing satisfaction of the Delivery Date Conditions); and

13                  in either event, if the Rent Commencement Date occurs before the satisfaction of the Initial Co-  
14    Tenancy Condition, Tenant shall be entitled to pay Alternate Rent in lieu of Fixed Rent until the Initial  
15    Co-Tenancy Condition is satisfied and the Landlord gives Tenant notice thereof, subject to any other  
16    applicable provisions of this Article 2.

17

18                  2.5.3    In addition to the provisions of Section 2.5.2 above, if the Initial Co-Tenancy  
19    Condition has not been satisfied by the first (1st) anniversary of the Delivery Date established pursuant  
20    to Section 2.3.2(a) above, then Tenant shall have the right, at any time prior to the satisfaction of the  
21    Initial Co-Tenancy Condition, upon giving Landlord at least One Hundred Twenty (120) days' prior  
22    notice, to terminate this Lease as of the date specified in said notice. Landlord may negate such  
23    termination by causing the Initial Co-Tenancy Condition to be satisfied within thirty (30) days after the  
24    date on which said termination notice is given. If this Lease is terminated hereunder, neither party  
25    shall have any further liability under this Lease, except: (i) for those obligations which survive the  
26    expiration or other termination of this Lease pursuant to the express terms of this Lease, and (ii)  
27    Landlord shall promptly reimburse Tenant for all of its reasonable third-party costs and expenses  
28    incurred in connection with this Lease, including, without limitation, costs associated with the  
29    preparation and review of plans and specifications, attorney's fees, and the performance of Tenant's  
30    Work, not to exceed ~~Five~~ ~~Two~~ Dollars (~~\$50,000~~) in the aggregate as to all such expenses.

31                  2.5.4    Provided that the Inducement Tenant is then open for business, if a lease is  
32    entered into with one (1) of the four (4) tenants set forth below (individually and collectively referred  
33    to as the "***Additional Inducement Tenants***":

Additional Inducement Tenants	Minimum Square-foot Gross Floor Area	Minimum Term
Pier 1	7,900	10 Years
Ross	30,000	10 Years
Best Buy	30,000	10 Years
Barnes & Noble	24,500	10 Years

34

35                  and such Additional Inducement Tenant is open for business to the public (the satisfaction of the  
36    foregoing condition is hereinafter referred to as "***Stage-2 Co-Tenancy Condition***"), then the Fixed  
37    Rent shall be increased by One and No/100 (\$1.00) Dollar per square foot of Floor Area in the  
38    Premises per year for the remainder of the Term. Additionally, if the foregoing condition is met with  
39    respect to a second (2<sup>nd</sup>) Additional Inducement Tenant (the satisfaction of the foregoing condition is  
40    hereinafter referred to as "***Stage-3 Co-Tenancy Condition***"), then the Fixed Rent shall be increased by  
41    an additional ~~One and No/100 (\$1.00)~~ Dollar per square foot of Floor Area in the Premises per year.  
42    Under no circumstances will the Fixed Rent set forth in Section 1.1.11 above be increased by more  
43    than Two and No/100 (\$2.00) Dollars per square foot of Floor Area in the Premises per year in the  
44    aggregate.

45

46                  Notwithstanding the foregoing, Books a Million or Borders may be substituted for Barnes &  
47    Noble as an Additional Inducement Tenant and Circuit City may be substituted for Best Buy as an

1 Additional Inducement Tenant, provided that each such substitute satisfies the requirements set forth  
2 above for the Additional Inducement Tenant that it is replacing.

### ARTICLE 3

## IMPROVEMENTS

6                   Section 3.1 Landlord's Work and Tenant's Work. Landlord shall, at its sole cost and  
7 expense, perform the work and obligations described on Exhibit D, Exhibit D-1, and Exhibit F hereto,  
8 and the "Final Plans and Specifications" (hereinafter defined in Section 3.2) (collectively, "Landlord's  
9 Work"), and shall deliver possession of the Premises to Tenant in the condition described therein.  
10 Except for Landlord's Work, Tenant shall, at its own cost and expense, do any and all work  
11 (hereinafter referred to as "Tenant's Work") which Tenant desires to adapt the Premises to Tenant's  
12 use.

### 13 Section 3.2 Plan Approvals.

### 3.2.1 Preparation of Plans and Specifications

15 (a) Within thirty (30) days after the Effective Date, Landlord shall deliver to  
16 Tenant drawings showing the proposed footprint, column layout, and interior clear dimensions of the  
17 Premises (the "*Preliminary LOD*") [Limits of Demised], which shall be subject to any reasonable  
18 modifications indicated by Tenant as provided below. The Preliminary LOD shall be substantially  
19 consistent with Exhibits B, D, and D-1 hereto.

20 (b) Within thirty (30) days after Tenant's receipt of the Preliminary LOD,  
21 Tenant shall deliver to Landlord its revisions thereto (the "**Revised LOD**"), showing the location of the  
22 interior structural grid (column layout), storefront opening, and mezzanine and/or office core, the  
23 location and arrangement of the loading facilities, trash compactor pad, and trash container pad(s), and  
24 any reasonable revisions to the interior clear dimensions.

25 (c) Within fifteen (15) days after Landlord's receipt of the Revised LOD,  
26 Landlord shall deliver to Tenant a final LOD (the "*Certified LOD*"), certified by Landlord, which shall  
27 incorporate all of the elements of the Revised LOD. Within fifteen (15) days after its receipt of the  
28 Certified LOD, Tenant shall notify Landlord of Tenant's approval thereof or the reasons why such  
29 approval cannot be granted, and Landlord shall, within fifteen (15) days after receiving such notice,  
30 make any revisions necessary to correct such matters and obtain Tenant's approval. Upon Tenant's  
31 approval of the Certified LOD, any further changes thereto shall be subject to Tenant's prior written  
32 approval (which may be withheld in its sole discretion), provided that, as to changes required to  
33 conform to Legal Requirements, Tenant shall have reasonable approval rights within the confines of  
34 said Legal Requirements. After Tenant approves the Certified LOD, Landlord shall be responsible for  
35 any and all reasonable costs incurred and delays experienced by Tenant in connection with any further  
36 changes to the Certified LOD required by Landlord.

37 (d) Within thirty (30) days after Tenant's receipt of the Certified LOD,  
38 Tenant shall deliver to Landlord its Fixture Plan (F1); Floor Finish Plans Notes and Details (F2);  
39 Power/Specialty Lighting Plan and Notes (F3); and Lighting Plans and Notes (F4) (collectively,  
40 "Tenant's Plans"), all of which shall be substantially consistent with the Certified LOD (as same may  
41 be reasonably modified by Tenant, as noted above).

42 (e) Within thirty (30) days after receipt of Tenant's Plans, Landlord shall  
43 prepare and submit to Tenant, in a single submission, Landlord's preliminary plans and specifications  
44 (the "*Preliminary Plans*") for Landlord's Work (which shall include, without limitation, mechanical,  
45 electrical, plumbing, fire protection and high-pile storage, structural, architectural and site plans  
46 [including, without limitation, a site lighting plan with photometrics]), and each of the plans which  
47 collectively constitute the Preliminary Plans shall be at least 85% complete, in Tenant's reasonable  
48 judgment. The Preliminary Plans shall be substantially consistent with Tenant's Plans, the Certified  
49 LOD, and Exhibits B, D, D-1, and F hereto.

50 (f) Within thirty (30) days after its receipt of the Preliminary Plans, Tenant  
51 shall give Landlord notice of the respects, if any, in which said Preliminary Plans fail to meet Tenant's  
52 reasonable approval and/or fail to conform to the Certified LOD, Tenant's Plans, and/or Exhibits B, D,  
53 D-1, and F hereto, and Landlord shall promptly make any revisions necessary to correct such matters  
54 and obtain Tenant's approval.

1 (g) Within thirty (30) days after the date on which Landlord receives notice  
2 of Tenant's approval of the Preliminary Plans, Landlord shall prepare and deliver to Tenant, in a single  
3 submission, final plans and specifications (the "*Final Plans and Specifications*"), which shall be  
4 substantially consistent with the Preliminary Plans, as approved by Tenant.

5 (h) Within fifteen (15) days after its receipt of the Final Plans and  
6 Specifications, Tenant shall notify Landlord of Tenant's approval thereof or the reasons why such  
7 approval cannot be granted, and Landlord shall, within fifteen (15) days after receiving such notice,  
8 make any revisions necessary to correct such matters and obtain Tenant's approval. Upon Tenant's  
9 approval of the Final Plans and Specifications, any further changes thereto shall be subject to Tenant's  
10 prior written approval. Unless specifically noted on a separate summary sheet attached to the Final  
11 Plans and Specifications, to the extent of a conflict between the terms and provisions of Tenant's  
12 Plans, Exhibit B, Exhibit D, Exhibit D-1, and/or Exhibit F hereto, and the terms and provisions of the  
13 Final Plans and Specifications, then the terms and provisions of Tenant's Plans, Exhibit B, Exhibit D,  
14 Exhibit D-1, and Exhibit F shall govern and prevail.

15 (i) All submissions by the parties of the Preliminary LOD, the Revised  
16 LOD, the Certified LOD, the Tenant's Plans, the Preliminary Plans, and the Final Plans and  
17 Specifications shall be made (or accompanied) by the computer files thereof formatted in any version  
18 of "Autocad" up to "Autocad 2002".

19 3.2.2 Plan Changes.

20 (a) Tenant shall have the right to make changes from the standards and  
21 specifications set forth in "Tenant's Prototype Drawings and Specifications" and/or the "Project  
22 Manual", referred to in Exhibit D hereto, and/or to require Landlord to subsequently make changes to  
23 either or both of the Preliminary Plans and Specifications and/or the Final Plans and Specifications in  
24 accordance therewith (the "*Changes*"), provided that any Changes of a material nature that Tenant  
25 desires to make to the exterior of the Premises after Tenant has approved the elevations and color  
26 board in respect of the Premises shall employ the same color scheme and use the same materials as in  
27 the balance of the Shopping Center unless Landlord approves otherwise. Within ten (10) business days  
28 after receiving Tenant's request for any Change, Landlord shall give Tenant notice of the cost or  
29 savings, and any delay that may be occasioned by such Change. If Tenant fails to authorize such  
30 Change within five (5) business days after receiving Landlord's notice, Tenant shall be deemed to have  
31 disapproved such Change.

32 (b) Tenant shall pay to Landlord the net reasonable additional third-party  
33 costs of Landlord's Work resulting directly and solely from the aggregate Changes (exclusive of any  
34 charges for overhead and profit, other than sums not exceeding 7% subcontractor profit and 7%  
35 general contractor profit thereon), taking into consideration any and all actual costs and savings  
36 resulting from all Changes, in the aggregate (including, without limitation, reasonable costs approved  
37 by Tenant in advance associated with any acceleration of the work schedule which Tenant, at its sole  
38 option, may require). Such payment shall be due and payable within thirty (30) days after Tenant's  
39 receipt of backup information reasonably supporting all such costs, including, without limitation,  
40 invoices, receipts and lien waivers of subcontractors and materialmen, but in no event earlier than the  
41 Delivery Date.

42 (c) Tenant shall be entitled to offset against Rent the net reasonable cost  
43 savings resulting from the aggregate Changes, not to exceed Fifty Thousand Dollars (\$50,000.00),  
44 taking into consideration all reasonable additional third-party costs of Landlord's Work directly and  
45 solely resulting from the Changes (exclusive of any charges for overhead and profit, other than sums  
46 not exceeding 7% subcontractor profit and 7% general contractor profit thereon). At Tenant's request,  
47 Landlord shall deliver to Tenant backup information reasonably supporting all such additional costs,  
48 including, without limitation, invoices, receipts, and lien waivers of subcontractors and materialmen.  
49 Such payment shall be due and payable within thirty (30) days after the Delivery Date.

50 (d) If the Changes occur during the preparation of any of the plans described  
51 in Section 3.2.1 above, then the deadlines for preparation and delivery of the plans then being prepared  
52 shall be extended as reasonably necessary to incorporate such Changes. If, despite Landlord's diligent  
53 efforts in performing Landlord's Work, the Changes cause a net delay in the Substantial Completion of  
54 Landlord's Work (taking into consideration any time reductions resulting from such changes), then:  
55 (i) the Rent Commencement Date shall be determined as if such delay had not occurred, (ii) the  
56 commencement of the Slack Period, and the dates set forth in clauses (a) and (b) of Section 3.3.2  
57 below, shall be extended by the number of days of such net delay; and (iii) with respect to Changes

1 requested after the Delivery Date Notice is given, for purposes of calculating liquidated damages under  
2 Subsection 2.3.2(b) above, the Delivery Date shall be extended by the number of days of such net  
3 delay.

4                   Section 3.3    Performance of Work

5                   3.3.1 Both Landlord's Work and Tenant's Work shall be performed in a good and  
6 workmanlike manner, in compliance with all applicable Legal Requirements, utilizing only new, first-  
7 class materials, and in accordance with all insurance company requirements. Landlord shall perform  
8 Landlord's Work in a manner such that Tenant will be able to obtain Tenant's Permits. Landlord shall  
9 pay all impact fees and related governmental charges in connection with Landlord's Work and all other  
10 work performed by or on behalf of Landlord in connection with the Shopping Center. If Tenant's  
11 Permits cannot be obtained because Landlord's Work has not been completed or has been performed  
12 improperly or by reason of any then existing condition of the Shopping Center, Landlord shall remedy  
13 the situation so as to enable Tenant to obtain Tenant's Permits, and the Delivery Date shall be deemed  
14 delayed, for Tenant's benefit only, on a day-for-day basis for each day of delay occasioned thereby.

15                   3.3.2 If: (a) Landlord's Work has not been commenced (i.e., if Landlord has not yet  
16 poured foundation footings for the Premises) by January 31, 2006, or (b) the Delivery Date shall not  
17 have occurred by October 1, 2006 (subject to *Force Majeure*, not to exceed thirty (30) days in the  
18 aggregate, and provided that Landlord shall have given Tenant notice of such event of *Force Majeure*  
19 promptly after its occurrence and subject to the extent of any Tenant Delays occurring after the date the  
20 Delivery Date Notice is given), Tenant may thereafter, during such time as Landlord's Work has not  
21 been commenced or the Delivery Date has not occurred, as the case may be, consider Landlord to be in  
22 default hereunder and, at Tenant's option in its sole discretion, elect to:

23                   (i)    terminate this Lease, if Landlord shall fail to fully cure such  
24 default within thirty (30) days after receiving Tenant's notice thereof, in which event neither  
25 party shall have any further liability hereunder, except: (i) for those obligations which survive  
26 the expiration or other termination of this Lease pursuant to the express terms of this Lease, and  
27 (ii) Landlord shall be obligated to promptly reimburse Tenant, as Tenant's sole monetary  
28 remedy by reason thereof, for all its reasonable third-party costs and expenses incurred in  
29 connection with this Lease (including, without limitation, costs associated with the preparation  
30 and review of plans and specifications, attorney's fees, and the performance of Tenant's Work),  
31 not to exceed: ~~£ 50,000~~ (100,000) in the aggregate as to all such costs and  
32 expenses; and/or

33                   (ii)    avail itself of the remedies set forth in Section 16.2 below  
34 (provided, however, that the cure period set forth therein shall not be applicable); and/or

35                   (iii)    extend one or more times the dates set forth in clauses (a) and/or  
36 (b) of this Subsection 3.3.2 to such future dates designated by Tenant in notice given to  
37 Landlord.

38                   The election by Tenant of any one or more of the foregoing remedies shall not preclude the subsequent  
39 election of any alternative remedy provided in this Section, this Lease, at law, or in equity.

40                   3.3.3 Landlord's Work Performed After Delivery of Possession. On or before the  
41 Delivery Date, Landlord's and Tenant's representatives together shall conduct a walk-through of the  
42 Premises to compile a punch list of the "Punch List Items" (hereinafter defined). Tenant shall deliver  
43 to Landlord a copy of said punch list within five (5) days after the walk-through. Landlord shall  
44 complete any Punch List Items within fifteen (15) days after it receives a copy of said punch list. If  
45 Landlord fails to complete any item on said punch list within said 15-day period, Tenant shall have the  
46 right to complete such item(s) using its own contractors and receive reimbursement from Landlord for  
47 the reasonable costs and expenses thereof upon demand. If reasonably required by Tenant, any portion  
48 of Landlord's Work which is performed after Tenant accepts physical possession of the Premises shall  
49 occur only "after hours", when neither Tenant nor any of its agents, contractors, employees and  
50 servants are working within the Premises, and Landlord shall reimburse Tenant for the reasonable  
51 costs and expenses incurred by Tenant by reason of such "after hours" performance of Landlord's  
52 Work. As used herein, the term "**Punch List Items**" shall mean such minor items of a cosmetic nature  
53 which, when considered as a whole, do not adversely affect either the performance of Tenant's Work  
54 or Tenant's ability to conduct its normal business operations in the Premises.

1                   3.3.4 Tenant's Right of Entry. Prior to the Delivery Date, following reasonable prior  
2 notice to Landlord (which may be telephone notice provided that Landlord has notified Tenant of the  
3 appropriate parties and their respective phone numbers for such purpose) and during normal business  
4 hours, Tenant may enter upon the Premises for the purposes of inspecting the work, taking  
5 measurements, making plans, erecting temporary or permanent signs and doing such other work as  
6 may be appropriate or desirable without being deemed thereby to have taken possession or obligated  
7 itself to pay Rent, provided, however, that Tenant shall not, during the course of such work, materially  
8 interfere with the performance of Landlord's Work and shall indemnify and hold Landlord harmless  
9 from and against any and all claims or losses arising from Tenant's entry upon the Premises, except to  
10 the extent caused by Landlord, its agents, employees, or contractors.

11                   3.3.5 Intentionally Omitted.

12                   3.3.6 Work Requirements After Delivery Date. Following the Delivery Date, any  
13 construction by Landlord or other tenants or occupants of the Shopping Center affecting any portion of  
14 the Shopping Center shall be subject to the following terms and conditions:

15                   (a)     staging and storage of materials and parking of construction vehicles  
16 shall occur only within the portions of the Shopping Center designated as "Staging" on Exhibit B  
17 hereto or with respect to construction on an Outparcel (as defined in Section 5.2.3 below), only within  
18 such Outparcel;

19                   (b)     Landlord shall diligently ensure that, from and after Tenant's opening for  
20 business to the public, no ingress, egress or passage of any construction, delivery and related vehicles  
21 engaged in the performance of such work or other construction activities shall take place except  
22 through the entrance/exit drive designated as the "Construction Drive" on Exhibit B hereto; and

23                   (c)     Landlord shall maintain the Shopping Center in a clean, safe, and slightly  
24 condition, and shall use reasonable efforts to ensure that such construction shall not materially  
25 adversely interfere with the normal conduct of any business operations in the Premises.

26                   3.3.7 Tenant's Trailer. Landlord shall install a trailer for Tenant's exclusive use in  
27 conducting employee interviews and recruiting, in accordance with Exhibit D hereto, in the location  
28 shown on Exhibit B hereto. Said trailer shall be installed and operational at least forty-five (45) days  
29 prior to the Delivery Date, and shall be removed within twenty (20) days (but not sooner than ten days)  
30 after the Delivery Date.

31                   3.3.8 Intentionally Omitted.

32                   3.3.9 Intentionally Omitted.

33                   Section 3.4 Measurement; Adjustment of Rent.

34                   3.4.1 Measurement of Premises and Shopping Center. Within five (5) days after the  
35 completion of the first course of masonry for the exterior walls of the Premises and demising walls of  
36 the Premises (and at least sixty (60) days prior to the Delivery Date), Landlord shall deliver to Tenant a  
37 certification to Tenant by Landlord's licensed architect, surveyor or engineer of the interior clear  
38 dimensions and the Floor Area of the Premises, and Floor Area of the Shopping Center, the  
39 measurements of which shall be subject to confirmation by Tenant's licensed architect, surveyor or  
40 engineer. If Landlord shall fail so to deliver such certification to Tenant, Tenant shall have the right to  
41 have any of such measurements made and certified to Landlord by Tenant's licensed architect,  
42 surveyor or engineer. If the Floor Area of the Premises varies from that shown on the Certified LOD  
43 (as may be modified by any applicable Changes) by two hundred fifty (250) square feet or more and/or  
44 if the width of the Premises is less than the interior clear dimensions shown on the Certified LOD (as  
45 may be modified by any applicable Changes), then Landlord shall correct such work to conform to the  
46 Certified LOD (as may be modified by any applicable Changes).

47                   3.4.2 Measurement of Storage Area/Mezzanine. Within five (5) days after the  
48 substantial completion of the floor system for the office mezzanine and the installation of the floor  
49 tracks for the walls enclosing it, Landlord shall deliver to Tenant a certification to Tenant by  
50 Landlord's licensed architect, surveyor or engineer of the Floor Area of each of said non-selling  
51 space(s), the measurements of which shall be subject to confirmation by Tenant's licensed architect,  
52 surveyor or engineer. If the square footage of the non-selling space on the office mezzanine varies by

1 greater than one percent (1%) from that shown on the Final Plans and Specifications, then, at Tenant's  
2 request, Landlord shall correct such work to conform to the Final Plans and Specifications.

3                   3.4.3 Adjustment of Fixed Rent and Tenant's Pro Rata Share. Subject to the  
4 foregoing provisions of this Section 3.4, if the measurement of the Premises shall indicate a Floor Area  
5 less than the Floor Area of the Premises set forth in Subsection 1.1.28 above, the Fixed Rent and any  
6 other applicable provision of this Lease (including, without limitation, Tenant's Pro Rata Share) shall  
7 be reduced to conform to the actual measurement, and Tenant shall receive a proportional refund of  
8 any Rent theretofore paid to Landlord. If the measurement of the Premises indicates that the actual  
9 Floor Area of the Premises exceeds the Floor Area of the Premises set forth in Section 1.1.28 hereof  
10 (as same may be increased due to Changes under Section 3.2 above), neither Fixed Rent nor Tenant's  
11 Pro Rata Share shall be increased by reason thereof. Landlord and Tenant shall each promptly execute  
12 and deliver to the other an amendment memorializing any change to the Fixed Rent, Tenant's Pro Rata  
13 Share, or any other applicable provisions of this Lease, made pursuant to this Section 3.4. Any dispute  
14 between the parties with respect to the Floor Area of the Premises, the square footage of said non-  
15 selling space or the Floor Area of the Shopping Center shall be resolved by arbitration in accordance  
16 with the provisions of Section 16.3 below.

17                   ARTICLE 4

18  
19                   FIXED RENT AND TAXES:  
20                   DETERMINATION AND PAYMENT

21                   Section 4.1 Fixed Rent. Commencing on the Rent Commencement Date and continuing  
22 throughout the Term, Tenant shall pay to Landlord the Fixed Rent, in equal successive monthly  
23 installments, in advance, on the first day of each and every calendar month throughout the Term,  
24 except that Fixed Rent payable for any partial calendar month during the Term shall be prorated based  
25 on a 365-day year. Fixed Rent shall be paid without demand, deduction or set-off, except to the extent  
26 otherwise expressly provided herein.

27                   Section 4.2 Payment of Rent. All Rent shall be mailed or otherwise delivered to Landlord's  
28 Mailing Address above or, upon at least thirty (30) days' prior notice to Tenant, to such other address  
29 as Landlord may from time to time designate. Landlord acknowledges and agrees that for  
30 administrative purposes, Tenant has designated BBBY Management Corporation, a New York  
31 corporation (the "*Paying Agent*"), to make all Rent payments due to Landlord under this Lease. Said  
32 designation (which may be revoked by Tenant at any time) is not intended as, and shall not constitute,  
33 an assignment of any rights or obligations of Tenant to the Paying Agent, and Tenant shall remain  
34 primarily liable for payment of Rent under this Lease. All payments of Rent received by Landlord  
35 from the Paying Agent shall be credited to Tenant as if such payments of Rent had been made by  
36 Tenant directly to Landlord.

37                   Section 4.3 Real Estate and Other Taxes.

38                   4.3.1 Landlord shall pay on or before the delinquency dates thereof all "Taxes"  
39 (defined in Subsection 4.3.3 below) other than personal property taxes levied against tenants.  
40 Throughout the Term, Landlord shall cause the Shopping Center to be maintained entirely within tax  
41 parcels and lots that exclude any property not a part of the Shopping Center.

42                   4.3.2 (a) Tenant shall pay to Landlord Tenant's Pro Rata Share of the Taxes  
43 which accrue during the Term, subject to the provisions of this Section 4.3. Any Taxes for a real estate  
44 fiscal tax year, only a part of which is included within the Term, shall be adjusted between Landlord  
45 and Tenant on the basis of a 365-day year as of the Rent Commencement Date or the date on which the  
46 Term expires or earlier terminates, as the case may be, for the purpose of computing Tenant's Pro Rata  
47 Share of Taxes. If, by law, any Taxes may, at the option of the taxpayer, be paid in installments  
48 (whether or not interest shall accrue on the unpaid balance thereof), Landlord shall exercise such  
49 option so as to maximize the number of installments, and Landlord shall pay the same before any fine,  
50 penalty, interest or cost may be added thereto for nonpayment thereof.

51                   (b) Landlord shall submit to Tenant a copy of the bill for Taxes issued by the  
52 applicable taxing authority, a computation of Tenant's Pro Rata Share of such Taxes and proof of the  
53 payment of Taxes for the previous payment period, as well as copies of all notices concerning  
54 assessments, tax rates, and changes thereto. Tenant shall pay Landlord in the amount required by this  
55 Subsection 4.3.2 within thirty (30) days after receipt of such bill (but in no event earlier than the  
56 fifteenth (15th) day prior to the date on which such Taxes would become delinquent).

1                   4.3.3 As used herein, "**Taxes**" shall mean all general, ad valorem real estate taxes, and  
2 assessments for betterments and improvements that are levied or assessed by any lawful authority on  
3 the Shopping Center (general or special), including any substitution therefor, in whole or in part, due to  
4 a future change in the method of taxation. Landlord and Tenant agree that, if Landlord receives, and/or  
5 the Shopping Center is the beneficiary of, any deferral, abatement or other tax-lowering adjustment or  
6 benefit including, without limitation, any tax increment financing (individually or collectively, "**Tax**  
7 **Reduction Program**"), then the Taxes otherwise payable but for such Tax Reduction Program shall be  
8 reduced by one-half of the benefits of such Tax Reduction Program each applicable tax year and  
9 Tenant's Pro Rata Share of Taxes shall be reduced accordingly. However, if any other tenant or  
10 occupant of the Shopping Center shall be entitled to greater benefit than Tenant in respect of any Tax  
11 Reduction Program, then Tenant shall be entitled to such greater benefit, and Tenant's Pro Rata Share  
12 of Taxes shall be adjusted accordingly. Landlord covenants that in no event shall Tenant's obligations  
13 under this Lease be increased or the benefits to Tenant under this Lease decreased by reason of any  
14 such Tax Reduction Program and the sales taxes imposed on the Shopping Center in connection with  
15 such program shall not exceed the sales taxes which otherwise would have been imposed on the  
16 Shopping Center if such Tax Reduction Program had not been entered into. For purposes of  
17 computing Tenant's Pro Rata Share of Taxes, Taxes shall not include any: (1) income, excise, profits,  
18 estate, inheritance, succession, gift, transfer, franchise, capital, or other tax or assessment upon  
19 Landlord or upon the rentals payable under this Lease; (2) taxes on rents (other than to the extent that  
20 such taxes are customarily paid by retail tenants in the state in which the Shopping Center is located),  
21 gross receipts or revenues of Landlord from the Premises; (3) fine, penalty, cost or interest for any tax  
22 or assessment, or part thereof, which Landlord or its lender failed to timely pay (except if same are  
23 caused by an Event of Default); (4) assessment for a public improvement arising from the initial  
24 construction or expansion of the Shopping Center or the Premises (it being agreed that all assessments  
25 imposed during the Term which are permitted to be included within Taxes hereunder shall, for the  
26 purposes of computing Tenant's Pro Rata Share thereof, be deemed to have been paid in the maximum  
27 number of installments permitted by the applicable taxing authority); (5) Taxes resulting directly from  
28 an increase in the assessment caused by a sale or ground lease of all or any portion of the Shopping  
29 Center to an Affiliate of Landlord or more than once every five (5) years; or (6) fees imposed upon  
30 Landlord in connection with Landlord's development of the Shopping Center (including, without  
31 limitation, trip generation fees). All Taxes payable by Tenant pursuant to this Section 4.3 shall be  
32 determined as if the Shopping Center was the only property owned by Landlord. Landlord represents  
33 to Tenant that, as of the Effective Date and, to the best of Landlord's knowledge, as of the anticipated  
34 Delivery Date, no portion of the Shopping Center is or will be (i) subject to or the beneficiary of an  
35 abatement, exemption and/or phase-in of Taxes, (ii) subject to any special assessments or similar  
36 charges, or (iii) are included in any special improvement district(s) which would result in higher sales  
37 taxes or other similar impositions than would exist in the absence of such district(s). Landlord  
38 estimates that the Tenant's Pro Rata Share of Taxes for the first full calendar year after the Shopping  
39 Center has been completed and fully assessed will be approximately \$1.75 per square foot of Floor  
40 Area in the Premises.

41                   4.3.4 At Tenant's request, Landlord shall contest the amount or validity of any  
42 assessed valuation or Taxes, failing which, Tenant shall have the right to contest the assessed valuation  
43 or Taxes by appropriate proceedings conducted in good faith, whereupon Landlord shall cooperate  
44 with Tenant, execute any and all reasonable documents which are necessary and proper therefor and  
45 required in connection therewith and, if required by any governmental authority having jurisdiction,  
46 join with Tenant in the prosecution thereof. If, as a result of any contest or otherwise, any rebate or  
47 refund of Taxes is received, Tenant shall be entitled to Tenant's Pro Rata Share thereof (after  
48 reasonable and customary expenses incurred by Landlord and/or Tenant in connection with such  
49 contest are paid to the party which incurred such expense). Notwithstanding the foregoing, if Landlord  
50 reasonably and in good faith believes that there is insufficient basis to contest the amount or validity of  
51 any assessed valuation of Taxes, and Tenant requests that Landlord contest the amount or validity of  
52 such assessed valuation or Taxes, such contest shall be at Tenant's cost and expense, which costs and  
53 expenses are subject to recoupment by Tenant from any rebate or refund as provided above.

54                   Section 4.4 Intentionally Omitted.

## ARTICLE 5

## COMMON AREAS, THEIR USE AND CHARGES

## Section 5.1 Common Areas: Maintenance,

5                   5.1.1 Maintenance of Common Areas. Landlord shall operate, maintain, repair and  
6 replace the Common Areas as required by this Lease and otherwise to the standard by which Common  
7 Areas of first-class shopping centers in the state in which the Shopping Center is located are operated,  
8 maintained, repaired and replaced, including, without limitation, snow, ice, rubbish and debris removal  
9 (including installation and maintenance of sidewalk refuse containers), landscaping (including, without  
10 limitation, the trimming and pruning of trees to minimize interference with the use or visibility of  
11 canopies or signs on the exterior of the Premises), adequate lighting of at least 2.5 foot candles average  
12 maintained illumination, insurance, supervision, use, parking lot paving and striping, drainage, security  
13 (as reasonably required), and control of all Common Areas, and Landlord shall comply with all  
14 applicable Legal Requirements.

### 5.1.2 Tenant's Pro Rata Share of Common Areas Charges.

27 (b) Within sixty (60) days after the end of each calendar year, Landlord shall  
28 provide to Tenant a statement, in detail reasonably satisfactory to Tenant, of Common Areas Charges  
29 for such year, which statement shall be prepared substantially in accordance with generally accepted  
30 accounting principles consistently applied (the "**CAC Reconciliation Statement**"). The CAC  
31 Reconciliation Statement shall be certified by Landlord as being accurate and shall be accompanied by  
32 a calculation of Tenant's Pro Rata Share of Common Areas Charges, and payment to Tenant in the  
33 amount of any overpayment made by Tenant during the preceding calendar year. If Tenant's Pro Rata  
34 Share of the actual Common Areas Charges for a calendar year shall exceed the aggregate monthly  
35 installments paid by Tenant during said calendar year, Tenant shall pay to Landlord the deficiency  
36 within sixty (60) days after receipt of such notice. Upon Tenant's request, Landlord shall promptly  
37 deliver to Tenant copies of relevant backup materials (including, but not limited to, contracts,  
38 correspondence and paid invoices) reasonably required by Tenant. If Landlord fails to timely remit to  
39 Tenant the amount of any overpayment hereunder, Tenant shall have the right (in addition to any rights  
40 and remedies to which it may be entitled under this Lease, at law, or in equity) to offset such amount  
41 from payments of Rent next becoming due hereunder, together with interest thereon at the Lease  
42 Interest Rate from the date such remittance is due until reimbursement or full satisfaction by credit.  
43 Notwithstanding any provision hereof to the contrary, in no event shall the Tenant's Pro Rata Share of  
44 Common Areas Charges (including insurance premiums) with respect to the first full calendar year of  
45 the Term exceed \$1.75 per square foot of Floor Area, and with respect to any other calendar year  
46 thereafter (exclusive of the costs of snow removal, insurance rate increases, and utility rate increases,  
47 for the Common Areas during such calendar year) exceed one hundred five percent (105%) of the  
48 Tenant's Pro Rata Share of Common Areas Charges paid by Tenant for the immediately preceding  
49 calendar year (exclusive of the costs of snow removal, insurance rate increases, and utility rate  
50 increases, for the Common Areas during such calendar year).

### 5.1.3 Exclusions from Common Areas Charges.

52 (a) Common Areas Charges shall not include: (1) the capital cost of any  
53 additions to the Common Areas pursuant to an expansion of the Shopping Center; (2) the cost of any  
54 replacements or capital improvements to the Common Areas, except that the cost of repaving the  
55 parking areas of the Shopping Center may be included within Common Areas Charges so long as such  
56 cost is amortized on a straight-line basis over the useful life thereof under generally accepted  
57 accounting principles, and is not incurred (A) prior to the expiration of the fifth (5th) full calendar year

1 of the Term, or (B) more than once during each five (5) full calendar years of the Term; (3) the cost of  
2 investigating, monitoring or remedying any environmental condition or "Hazardous Substances" or  
3 any other "Compliance Costs" (both as hereinafter defined in Subsection 12.4.1); (4) any debt service  
4 (including principal and interest) or payments of any judgments or other liens against Landlord; (5) the  
5 cost of maintaining, repairing or providing security for interior portions of buildings; (6) Taxes or other  
6 taxes levied or assessed against Landlord or the Shopping Center; (7) the cost of compliance with  
7 applicable Legal Requirements (including, without limitation, the cost of curing violations or  
8 contesting such Legal Requirements), except that Common Areas Charges shall include the cost of  
9 compliance with laws affecting only the Common Areas provided that same shall (A) apply only to  
10 laws enacted after the Rent Commencement Date, (B) not be necessitated by the acts or omissions of  
11 Landlord or any other tenant or any of their respective agents, subtenants, occupants, contractors or  
12 employees, (C) not be necessitated by the particular nature of any other tenant's business (for purposes  
13 of example only and not of limitation, laws mandating the installation of special water or grease traps  
14 for restaurants or gas stations), (D) be amortized on a straight-line basis over the useful life thereof  
15 under generally accepted accounting practices, and (E) be similarly imposed on all other tenants of the  
16 Shopping Center; (8) any costs resulting from insurance deductibles or any payments made under any  
17 self-insurance policy maintained by Landlord; (9) any costs which would have been reimbursed or paid  
18 for by insurance proceeds had Landlord maintained the insurance required under Section 10.3 hereof  
19 and the amount of any judgment or other charge entered or costs assessed against Landlord in excess  
20 of the policy limits of the insurance maintained by Landlord under Section 10.3 hereof; (10) those  
21 portions of Landlord's insurance premiums which are reimbursed to Landlord by any other tenant in  
22 the Shopping Center other than through the payment of such tenant's proportionate share of insurance  
23 premiums otherwise includable as part of Common Areas Charges; (11) sums paid or owed by  
24 Landlord to any tenant in the Shopping Center; (12) costs incurred in connection with the negotiation  
25 of leases with, or construction of improvements for, any tenant in the Shopping Center (including,  
26 without limitation, brokerage commissions and legal fees); (13) costs incurred in connection with  
27 lawsuits or other legal actions (including, without limitation, arbitrations and mediations) instituted or  
28 defended by Landlord; (14) sums incurred as late payment fees, penalties or interest; (15) ground rent;  
29 (16) depreciation [except as expressly permitted pursuant to item 23 below]; (17) costs  
30 disproportionately incurred by or on behalf of any one or more of the tenants in the Shopping Center  
31 (including, without limitation, all costs relating to the operation of any food court in the Shopping  
32 Center); (18) electricity costs for lighting Common Areas later than the "Normal Hours" [hereinafter  
33 defined in Section 5.2], other than low-level security lighting; (19) Landlord's advertising,  
34 entertainment and promotional costs for the Shopping Center (including, without limitation, holiday  
35 decorations); (20) costs of acquiring, leasing, restoring, insuring or displaying sculptures, paintings and  
36 other objects of art located within or outside the Shopping Center; (21) costs and expenses payable to  
37 Landlord or its Affiliate, to the extent that such costs and expenses exceed competitive costs and  
38 expenses for materials and services by unrelated persons or entities of similar skill and experience;  
39 (22) repairs resulting from defects in the original construction of the Shopping Center arising within  
40 one (1) year after the Rent Commencement Date; (23) the cost of mechanized equipment for the  
41 maintenance of the Common Areas (but not the straight-line depreciation thereof over its useful life, as  
42 determined in accordance with generally accepted accounting principles); (24) reserves for anticipated  
43 future expenses; (25) any cost or expense, other than the Administrative Fee, relating to the  
44 administration and management of the Common Areas (whether on-site or off-site) including, but not  
45 limited to, overhead, management fees, office salaries and benefits, office rental, office supplies, dues  
46 and subscriptions, office utility charges, telephone charges and automobile expenses; (26) costs  
47 incurred in connection with the monitoring, maintenance, inspection, or testing of fire alarm systems;  
48 (27) costs and expenses payable to Landlord, or its Affiliate or designee, for the provision of utility  
49 service(s) to the Common Areas, to the extent that such costs and expenses exceed competitive market  
50 rates; or (28) any and all costs relating to (including, without limitation, costs to operate, manage,  
51 maintain, insure or repair) those Common Areas located on the Sam's Parcel.

52 (b) In addition, if any tenant or other occupant of the Shopping Center  
53 (i) maintains the Common Areas in whole or in part, or any facilities therein, (ii) provides any services  
54 the cost of which would otherwise be includable in Common Areas Charges, and/or (iii) pays directly  
55 for costs which would otherwise be included in the Common Areas Charges, then the costs associated  
56 with or attributable to any of the foregoing shall be excluded from Common Areas Charges, and the  
57 denominator used to determine Tenant's Pro Rata Share of such costs (and only such costs) shall be  
58 reduced by the Floor Area occupied by such tenant or other occupant.

59 (c) Common Areas Charges for any period during the Term which  
60 constitutes less than a full calendar year shall be equitably prorated.

1                   5.1.4 Tenant's Right to Audit. Tenant shall have the right, within three (3) years after  
2 receiving any CAC Reconciliation Statement (and not more than once annually) to audit Landlord's  
3 books and records to verify Landlord's calculation of Common Areas Charges as reflected therein and  
4 Tenant's Pro Rata Share thereof. Upon Tenant's request, Landlord shall promptly deliver to Tenant  
5 copies of relevant backup materials (including, but not limited to, contracts, correspondence and paid  
6 invoices) reasonably required by Tenant. In the event of an error in Landlord's favor, Landlord shall  
7 refund the overcharge to Tenant within thirty (30) days after Tenant's demand therefor, and if the  
8 overcharge exceeds three (3%) percent of Tenant's Pro Rata Share of Common Areas Charges,  
9 Landlord shall pay to Tenant the reasonable expenses of the audit within thirty (30) days after Tenant's  
10 demand therefor, failing which, Tenant shall have the right (in addition to any rights and remedies to  
11 which it may be entitled under this Lease, at law, or in equity) to offset such amount from payments of  
12 Rent next becoming due hereunder, together with interest thereon at the Lease Interest Rate from the  
13 date such remittance is due until reimbursement or full satisfaction by credit. In the event of an error in  
14 Tenant's favor, Tenant shall pay the net shortfall (after deducting Tenant's expenses for the audit) to  
15 Landlord within thirty (30) days after Tenant's discovery thereof. Landlord shall maintain all books  
16 and records pertaining to a calendar year for at least three (3) years after it delivers to Tenant a CAC  
17 Reconciliation Statement for such calendar year. Tenant shall keep the results of any such audit  
18 confidential, provided that nothing contained herein shall restrict Tenant from disclosing such  
19 information as may be required by applicable Legal Requirements, or to its accountants, attorneys or  
20 bona fide prospective assignees or subtenants (provided that each of such recipients shall be bound by  
21 the same non-disclosure provisions as are imposed upon Tenant). Any dispute by Landlord with  
22 respect to an audit by Tenant shall be submitted to arbitration in accordance with the provisions of  
23 Section 16.3 below.

24                   5.1.5 In no event shall Tenant be required to join, participate in or contribute to any  
25 promotional fund, marketing fund or merchants' association.

26                   Section 5.2 Common Areas: Restrictions.

27                   5.2.1 Continuous Access. No entrances, exits, approaches and means of ingress and  
28 egress to, from, and/or within the Shopping Center or the Premises as shown on Exhibit B hereto shall  
29 be interrupted or disturbed by any act or omission of Landlord during the Term, except: (i) in the event  
30 of an emergency or as may be otherwise required by applicable Legal Requirements, in which event  
31 Landlord shall use reasonable efforts to give Tenant advance notice of same and to minimize  
32 interference to Tenant's normal business operations in the Premises as a result thereof; or (ii) in the  
33 event that Landlord is required to temporarily close the Common Areas, for the minimum time legally  
34 necessary to prevent a dedication thereof or an accrual of any rights in any person or the public  
35 generally therein; provided that such closure shall not occur during August, November or December of  
36 any calendar year, and Landlord shall give Tenant at least thirty (30) days' prior notice thereof.

37                   5.2.2 No Alterations. Landlord shall not, without obtaining Tenant's prior written  
38 consent in each instance, which consent may be withheld in its sole discretion: (i) alter the area of the  
39 Shopping Center or the location, availability, or size of any Common Area improvement located within  
40 the area designated as "Critical Area" on Exhibit B hereto (the "**Critical Area**"), from that shown on  
41 Exhibit B hereto; (ii) construct or permit to be constructed any structures in the Critical Area of the  
42 Shopping Center (including, without limitation, any buildings, kiosks, booths, signs or similar  
43 structures in the Critical Area), other than as shown on Exhibit B hereto; (iii) materially change the  
44 entrances or exits to and from the Shopping Center, or the curb cuts, roadways, drive aisles, sidewalks  
45 or other elements of the Common Areas, or the number, location or layout of parking spaces located  
46 within the Critical Area from those shown on Exhibit B hereto. Landlord shall neither perform nor  
47 permit to be performed, any construction, repairs, replacements or maintenance to any portion of the  
48 Shopping Center, including the Premises (other than emergency repairs to utilities and Common Areas  
49 and as otherwise permitted by Section 5.2.6 below) during the months of August, November and  
50 December of any year, without the prior consent of Tenant, which consent may be withheld in  
51 Tenant's sole discretion.

52                   5.2.3 Outparcels. In addition to the provisions of Subsection 5.2.2 above, during the  
53 Term, the following restrictions shall encumber and bind the outparcels (collectively, the "**Outparcels**"  
54 and individually, an "**Outparcel**") designated on Exhibit B hereto as "Lot 3," "Lot 4," "Lot 5," "Lot 6,"  
55 "Lot 7," and "Lot 8": (a) no more than one building shall be constructed on any Outparcel; (b) no  
56 building shall exceed one story in height; (c) no building shall exceed a maximum height of twenty-six  
57 feet (26') as measured from the finished floor level to the highest point on such building or structure  
58 (inclusive of the height of all types of projections or architectural treatments or embellishments

1 thereon, such as, but without limitation, HVAC equipment, parapets, mansards, signs, satellite dishes,  
2 and antennae); (d) the Floor Area of any building constructed on an Outparcel shall not exceed the  
3 Floor Area established therefor on Exhibit B hereto; and (e) all Legal Requirements relative to parking  
4 requirements for each Outparcel operation shall be complied with by providing the requisite number of  
5 parking spaces solely within the boundaries of such Outparcel, without reduction in such number by  
6 virtue of the granting of a variance or special exception. For purposes of this Subsection 5.2.3, the  
7 Floor Area of any building constructed on an Outparcel shall also be deemed to include outdoor  
8 balconies, patios or other outdoor areas utilized for retail sales or food or beverage service (exclusive  
9 of drive through or walk-up take-out food or beverage service).

10       5.2.4 Parking Area. During the Term, Landlord shall maintain in the Shopping  
11 Center, at a minimum, the greater of (i) the number of parking spaces required by applicable Legal  
12 Requirements, without variance, or (ii) five (5) ground-level parking spaces for every one thousand  
13 (1,000) square feet of Floor Area in the Shopping Center, with at least ninety percent (90%) of such  
14 spaces being at least nine (9) feet in width and eighteen (18) feet in length and no more than ten  
15 percent (10%) of such spaces being compact spaces, with such compact spaces to be proportionately  
16 located throughout the parking field of the entire Shopping Center. Parking spaces shall at all times be  
17 clearly marked by painting, striping or otherwise. Except as designated as "Reserved Parking" on  
18 Exhibit B hereto, Landlord shall not designate specific parking spaces for use by other tenants or  
19 occupants of the Shopping Center, nor shall Landlord permit any person or entity to use the parking  
20 areas other than Tenant, the other tenants and occupants of the Shopping Center, and their respective  
21 employees, agents, subtenants, concessionaires, licensees, customers, and invitees. There shall be no  
22 charge whatsoever levied for the use of any parking areas within the Shopping Center. Landlord shall  
23 not permit overnight parking in the Shopping Center.

24       5.2.5 Lighting. Throughout the Term, Landlord shall keep the Common Areas fully  
25 lighted and open to the customers of the Shopping Center seven (7) days a week from dusk until 11:00  
26 p.m. Monday through Saturday and until 7:00 p.m. on Sunday ("*Normal Hours*"). Upon request of  
27 Tenant, Landlord shall keep the Common Areas lighted for as long after Normal Hours as Tenant shall  
28 request, provided Tenant shall pay for a share of the reasonable cost of said requested lighting, which  
29 share shall be equal to the product of (x) such cost, and (y) a fraction, the numerator of which shall be  
30 the number of square feet of Floor Area within the Premises and the denominator of which shall be the  
31 aggregate number of square feet of Floor Area of all premises within the Shopping Center (including  
32 the Premises) open later than Normal Hours (excluding, however, those tenants and occupants who  
33 separately control and pay for their own Common Area lighting). In addition to the foregoing,  
34 Landlord shall provide for low level security lighting from one (1) hour after the close of business in  
35 the Premises until dawn.

36       5.2.6 Repairs. During the Term, any construction or repair by Landlord permitted or  
37 required under this Lease and undertaken in the Common Areas or in any other portion of the  
38 Shopping Center shall:

39           (a)    not be performed during the months of August, November, or December  
40 of any year from and after the opening of Tenant's store for business to the public, except (i) in the  
41 event of an emergency, (ii) as may be otherwise required by applicable Legal Requirements, or (iii) for  
42 construction occurring within the interior of any building provided that such interior construction shall  
43 not require an exterior staging area and shall not otherwise have any adverse impact on the Common  
44 Areas or the ongoing operations at the Premises or the balance of the Shopping Center;

45           (b)    be commenced only upon at least five (5) days' prior notice to Tenant  
46 (except in an emergency, in which event Landlord shall only be required to give such notice as is  
47 reasonable under the circumstances); and

48           (c)    be performed in accordance with the requirements of Section 3.3.6 above  
49 and in such a manner so as not to materially interfere with the normal conduct of any business  
50 operations in the Premises.

51       5.2.7 Rules and Regulations. Tenant shall comply with the rules and regulations of  
52 the Shopping Center as established from time to time by Landlord, within sixty (60) days after  
53 Landlord notifies Tenant thereof, provided they: (i) are reasonable, (ii) do not adversely affect the  
54 normal conduct of any business operations in the Premises, (iii) do not adversely affect any of Tenant's  
55 rights under this Lease, and (iv) are uniformly enforced against all tenants of the Shopping Center and  
56 without prejudice against Tenant. In the event of any conflict between the provisions of this Lease and  
57 any rules or regulations, the provisions of this Lease shall prevail and govern.

1                   5.2.8 Miscellaneous.

2                   (a) No Promotional Use. Landlord shall not use or permit the use of all or  
3 any portion of the Common Areas for retail sales or for promotional purposes. Notwithstanding the  
4 foregoing provision, tenants of the Shopping Center (including Tenant) shall be permitted to conduct  
5 sidewalk sales in front of their respective stores only, provided that such sales shall: (A) be conducted  
6 in a manner consistent with sidewalk sales in first-class shopping centers in the state in which the  
7 Shopping Center is located, (B) not materially interfere with normal pedestrian access over the  
8 sidewalks, and (C) not materially interfere with the normal business operations of Tenant in the  
9 Premises or materially impair the visibility of Tenant's signage. Landlord shall not permit any  
10 solicitation, distribution of handbills, picketing, or other public demonstration in the Common Areas,  
11 except as otherwise may be mandated by applicable Legal Requirements.

12                   (b) Trash Compactor & Containers. Tenant shall be permitted to maintain  
13 and operate, at no extra charge: (i) a trash compactor in the portion of the Common Areas designated  
14 on Exhibit B hereto as "Trash Compactor Pad"; and (ii) a trash container(s) in the portion(s) of the  
15 Common Areas designated on Exhibit B hereto as "Trash Container Pad". Tenant, at its sole cost and  
16 expense, shall keep the trash compactor and containers neat and clean and repair any damage caused  
17 by use and storage of such compactor and containers.

18                   (c) Shopping Carts. Tenant shall be permitted to store its shopping carts in  
19 such exterior cart corrals as may be reflected on Exhibits B and D-1 hereto. With respect to shopping  
20 carts provided by Tenant for the use of its customers, Tenant will use reasonable efforts to periodically  
21 remove same from the Common Areas.

22                   (d) Cellular Towers. No transmission and/or reception towers for wireless  
23 telephone or internet communications shall be permitted within the Shopping Center.

24                   ARTICLE 6  
25  
26                   UTILITIES

27                   Section 6.1 Utility Service. From and after the Delivery Date and continuing thereafter  
28 through the end of the Term, Tenant shall be solely responsible for and shall pay the cost of utilities  
29 services (including, without limitation, electricity, gas, water, sanitary sewer, alarm and  
30 telecommunications) consumed in the Premises by Tenant. Tenant shall not be obligated to purchase  
31 utility service(s) directly from Landlord, or from any utility provider designated by Landlord.  
32 Landlord shall provide separate utility meters exclusively serving the Premises, at its sole cost and  
33 expense (including, without limitation, all connection and hook-up fees). Tenant's entry upon the  
34 Premises prior to the Delivery Date shall not constitute a waiver by Tenant of Landlord's obligation to  
35 pay the costs of all utility charges incurred in the Premises prior to the Delivery Date. Landlord shall  
36 not permit the capacity of utility lines available for use at the Premises to be reduced or overloaded by  
37 any other persons or entities. Landlord shall permit Tenant and its telecommunications provider full  
38 and free access to, and use of, available telecommunications conduits in the Shopping Center for the  
39 provision of telecommunications service to the Premises, subject to such reasonable requirements as  
40 Landlord may impose.

41                   Section 6.2 Interruption. Notwithstanding any provision of this Lease to the contrary, in the  
42 event utilities serving the Premises are disrupted due to the acts or omissions of Landlord, its agents,  
43 contractors, servants or employees, Landlord shall promptly restore the affected utilities at Landlord's  
44 sole cost and expense. If the disrupted utilities are not restored within thirty-six (36) hours after the  
45 Landlord has knowledge of the disruption, and Tenant is unable to conduct its normal business in the  
46 Premises as a result thereof, Rent shall be equitably abated during the period of disruption. Except as  
47 provided in this Section 6.2, Landlord shall have no liability to Tenant for a disruption of the utilities  
48 serving the Premises; provided, however, Landlord shall use commercially reasonable efforts to restore  
49 (or cause to be restored) the disrupted utilities.

50                   Section 6.3 Intentionally Omitted.

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ARTICLE 7

SIGNS

5       Section 7.1    Tenant's Building Signage. Landlord shall supply and install signage (and  
6 obtain all permits and approvals therefor) as part of Landlord's Work in accordance with Exhibits D,  
7 D-1, and F hereto, and with the additional provisions of this Lease. Subject to compliance with  
8 applicable Legal Requirements, and provided that all such exterior signs erected by Tenant are either  
9 Tenant's prototypical signs or are reasonably aesthetically compatible with the exterior signage in the  
10 Shopping Center or have otherwise been approved by Landlord pursuant to Section 7.3 below, Tenant  
11 shall have the exclusive right during the Term, at its sole cost and expense, to erect, maintain, and  
12 replace on the storefront and exterior walls of the Premises, and on the side walls of any entrance  
13 design element, if any, signs (including, without limitation, under-canopy or blade signs), banners  
14 (including temporary banners placed on the storefront of the Premises and such other walls of the  
15 Premises as selected by Tenant), awnings, and flags of such size, design and color as Tenant, from  
16 time to time, may desire, subject to compliance with applicable Legal Requirements. Tenant may erect  
17 and maintain in the interior of the Premises any signs it may desire, provided that same are  
18 professionally prepared.

19       Section 7.2    Pylon/Monument Signage. Landlord shall provide pylons and monuments at the  
20 locations shown on Exhibit B hereto during the entire Term, and obtain all permits and approvals  
21 therefor. Landlord, as part of Landlord's Work, shall obtain all governmental approvals and permits  
22 for, and shall procure and install, Tenant's sign panel(s) on all sides of such pylons and monuments, in  
23 accordance with the provisions of Article 3 and Exhibits D and F hereto. The dimensions of Tenant's  
24 pylon sign panel(s) shall be at least as large as those of other occupants of the Shopping Center  
25 occupying less than fifty thousand (50,000) square feet of Floor Area, and shall be located above the  
26 signs of all other tenants of the Shopping Center occupying less than fifty thousand (50,000) square  
27 feet of Floor Area. In addition, if Landlord constructs or makes available to any other tenant or tenants  
28 in the Shopping Center any other signage located in the Common Areas or on the Sam's Parcel (and  
29 with respect to the Sam's Parcel subject to the rights of the owner of the Sam's Parcel under the Sam's  
30 OEA), such signage shall also include Tenant's identification sign, as shown on Exhibit F hereto,  
31 which shall be higher than and at least as large as the largest sign made available to all other tenants of  
32 the Shopping Center occupying less than fifty thousand (50,000) square feet of Floor Area. Landlord  
33 shall maintain all pylons and monuments, and Tenant's signs thereon, in good order and repair, and  
34 allow Tenant access to replace its signs thereon, at Tenant's cost and expense. Landlord shall not  
35 change or alter the location, structure, height or general appearance of the pylons or monuments  
36 without obtaining Tenant's prior consent. The cost of maintaining all pylons and monuments bearing  
37 Tenant's sign panel(s) [but not the cost of individual tenants' signs thereon or the cost of the  
38 construction of the pylons and monuments] and the costs of any electricity used to illuminate them  
39 (such maintenance and electricity costs are collectively referred to as "**Pylon Costs**") shall be  
40 includable in Common Areas Charges; provided, however, for the purposes of determining Tenant's  
41 Pro Rata Share of the Common Areas Charges, the Pylon Costs includable in Common Areas Charges  
42 shall be reduced by an amount determined by multiplying the total amount of Pylon Costs by a  
43 fraction, the numerator of which is the aggregate area of the identification panels for tenants or  
44 occupants of the Project that are not also tenants or occupants of the Shopping Center and the  
45 denominator of which is the total area of all identification panels (including any Shopping Center  
46 identification panel) on such pylon or monument sign(s). If the top position on the pylon sign, as  
47 shown on Exhibit F, is occupied by another tenant's sign panel, then upon the expiration or earlier  
48 termination of such other tenant's lease, Tenant shall have the right to relocate its pylon sign panel to  
49 the top position on the pylon sign, at Tenant's sole expense; provided however, the foregoing shall not  
50 apply to the top panel if such panel is to be occupied by a tenant or occupant of the Shopping Center  
51 which occupies at least fifty thousand (50,000) square feet of Floor Area.

52       Section 7.3    Signage: Alteration/Removal/Allocation. Tenant shall have the right, from time  
53 to time, without Landlord's approval, to change its signs on the storefront and exterior of the Premises,  
54 as well as on any pylon or monument, provided that (a) the area of the new sign is no larger than the  
55 area of the sign which it replaces, (b) that the method of construction and attachment is substantially  
56 the same, and (c) such signs are either Tenant's prototypical signs or are aesthetically compatible with  
57 those of the balance of the Shopping Center, not including the Outparcels. Upon the expiration or  
58 earlier termination of the Lease, Tenant shall remove its signs from the fascia or other exterior walls of  
59 the Premises and from any pylon or monument, and shall repair any damage occasioned thereby. The  
60 signage rights granted to Tenant pursuant to this Article 7 shall, at Tenant's option, be allocated to or

1 between Tenant and/or any subtenant(s) of all or any portion of the Premises. All signage installed by  
2 Landlord and Tenant hereunder shall comply with applicable Legal Requirements. Any exterior  
3 building façade signs that are not Tenant's (or any subtenant's) prototypical signs and not reasonably  
4 aesthetically compatible with those of the balance of the Shopping Center (not including the  
5 Outparcels) shall be subject to Landlord's approval.

6       Section 7.4 Cooperation. Landlord, upon request, shall execute any consents or applications  
7 which may be reasonably required by applicable Legal Requirements to permit the placement,  
8 installation, and/or replacement by Tenant of any signs on any part of the Premises or on any pylon or  
9 monument, to which Tenant may be entitled under this Lease.

## 10 Section 7.5 Signage and Building Restrictions and Criteria.

11           7.5.1 During the Term, no exterior identification signs attached to any building of the  
12 Shopping Center shall be of the following type: **(i)** flashing, moving or audible signs; **(ii)** signs  
13 employing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers,  
14 provided that Tenant shall have the right to employ any methods necessary for the installation of  
15 internally illuminated self-contained channel letters; or **(iii)** paper or cardboard signs other than  
16 professionally prepared interior window signs advertising special sales within the subject premises,  
17 temporary signs (exclusive of contractor signs), stickers or decals, provided, however, the foregoing  
18 shall not prohibit the placement at the entrance of each such premises of (A) small stickers or decals  
19 which indicate hours of business, emergency telephone numbers, credit cards accepted, and other  
20 similar information, and/or (B) a sticker or decal which contains the phrase "no solicitation" or words  
21 of like import. No billboard signs shall be permitted within the Shopping Center.

22                   7.5.2 Landlord shall not permit any obstructions (including, without limitation, any  
23 trees, bushes or other landscaping, scaffolding or architectural details) to obscure Tenant's storefront,  
24 storefront signs or other exterior wall signs or any pylons, monuments or other freestanding signs.  
25 Except as otherwise permitted under Existing Leases (hereinafter defined in Section 12.3(j)), no  
26 premises in the Shopping Center containing less Floor Area than the Floor Area of the Premises shall  
27 have: (i) building signage possessing more total square footage than the total square footage available  
28 for use by Tenant, or a maximum height greater than the maximum height of Tenant's building  
29 signage, as measured from the finished floor level to the highest point on such signage, or (ii) a  
30 building and entrance design element higher or wider than the height or width of the building and  
31 entrance design element of the Premises.

## ARTICLE 8

## ALTERATIONS AND IMPROVEMENTS

## 35 Section 8.1 Alterations and Improvements.

36           8.1.1 Tenant shall not perform any structural alterations or structural improvements to  
37 the Premises (except to the extent same pertain to Tenant's Work) without the prior approval of  
38 Landlord, provided, however, that Tenant's alterations or improvements to the exterior of the Premises  
39 to conform to Tenant's then-current prototypical elevation shall not require Landlord's consent  
40 provided that such alterations or improvements are architecturally harmonious, in terms of color and  
41 materials, with the balance of the Shopping Center. All other structural alterations or structural  
42 improvements shall require Landlord's consent. All work performed by Tenant in connection with  
43 structural and non-structural alterations or improvements shall be done at Tenant's sole cost and  
44 expense, in a good and workmanlike manner and in compliance with all applicable Legal  
45 Requirements. The provisions of this Section 8.1 shall not apply to Tenant's building signage, which  
46 shall be governed by the applicable provisions of Article 7 above.

47           8.1.2 Tenant may, from time to time, at its sole cost and expense, without the prior  
48 approval of Landlord, make non-structural alterations and non-structural improvements to the Premises  
49 as Tenant deems necessary or desirable, including, but not limited to, electrical systems, heating,  
50 ventilation and air conditioning and other mechanical systems, installation of fixtures and equipment,  
51 painting, and wall and floor coverings. Any non-structural exterior alterations and non-structural  
52 exterior improvements shall be subject to the provisions of Subsection 8.1.1(a) above relating to  
53 structural exterior alterations and improvements.

1                   8.1.3 Tenant shall have the right to subdivide the Premises into two (2) separate  
2 stores, each of which may have its own front entrance and access to the loading docks in the rear of the  
3 Premises, as well as separately sub-metered utilities.

4                   8.1.4 Tenant shall have the right to erect and maintain, at Tenant's sole cost and  
5 expense, an antenna and a satellite dish on the roof of the Premises, provided that Tenant: (i) obtains  
6 Landlord's prior approval of its plans for the installation of such equipment, (ii) uses a contractor  
7 designated or approved by Landlord for all roof penetrations so as not to violate or invalidate any roof  
8 warranties maintained by Landlord, (iii) maintains the area where roof penetrations are made while  
9 Tenant's equipment is present, (iv) repairs any damage to the roof caused by the making of the roof  
10 penetrations, including, but not limited to, the repair of the roof penetrations upon the removal of any  
11 equipment installed thereon, and (v) erects and maintains such equipment in accordance with  
12 applicable Legal Requirements.

13                   8.1.5 Landlord shall execute and return to Tenant all appropriately completed building  
14 department or equivalent applications within ten (10) days after Tenant's request therefor, and will  
15 reasonably cooperate with Tenant in the permitting process.

16                   8.1.6 If any violation of any applicable Legal Requirement which is noted against the  
17 Shopping Center or the Premises (other than a violation caused by Tenant) prevents Tenant from  
18 obtaining a building permit for any alterations or a certificate of occupancy, then, upon request by  
19 Tenant, Landlord shall promptly use diligent efforts to cause such violation to be removed of record to  
20 the extent required to permit Tenant to obtain its building permit or certificate of occupancy, as the  
21 case may be.

22           8.1.7 Landlord shall not make any alterations to the Premises (including, without  
23 limitation, changing the design, color or materials of the exterior of the Premises) nor shall Landlord  
24 construct an additional floor or floors above the Premises. Landlord shall neither make nor permit to  
25 be made any alterations to the exterior architectural theme of the remainder of the Shopping Center (as  
26 shown on Exhibit D-2 hereto) which would be inconsistent with a first-class shopping center in the  
27 state in which the Shopping Center is located (exclusive of other tenants' entrance features) without  
28 the prior consent of Tenant.

## ARTICLE 9

## REPAIRS

32       Section 9.1    Tenant's Repairs. Subject to the provisions of Articles 10 and 11 hereof, and  
33 except as otherwise provided in Section 9.2 below, Tenant shall maintain in good condition and repair,  
34 at its sole cost and expense: (i) all non-structural, interior elements of the Premises (including plate  
35 glass, storefront windows, doors, door closure devices, window and door frames, molding, locks and  
36 hardware, and the painting or other treatment of interior walls, and the electrical, plumbing,  
37 mechanical, and/or alarm systems located in, or serving, exclusively the Premises); and (ii) the heating,  
38 ventilation and air conditioning ("HVAC") units exclusively serving the Premises. All repairs and  
39 replacements on Tenant's part to be performed hereunder shall be at Tenant's sole cost and expense,  
40 and performed lien free in a good and workmanlike manner and in accordance with all applicable  
41 Legal Requirements.

42                   Section 9.2    Landlord's Repairs. Subject to the provisions of Articles 10 and 11 hereof,  
43 Landlord shall perform, as the same shall from time to time be necessary, all repairs and replacements  
44 to the following:

45 (a) the buildings of the Shopping Center as necessary to maintain same in  
46 good condition and repair (including, without limitation, repainting the exterior walls of the buildings  
47 of the Shopping Center (including, without limitation, the Premises)) as same may be reasonably  
48 required from time to time during the Term;

49 (b) the structural elements of the Premises, which shall be deemed to  
50 include, without limitation, the roof joists, columns, footings, foundation, exterior walls (including,  
51 without limitation, repainting, but excluding plate glass, storefront windows, doors, door closure  
52 devices, window and door frames, molding, locks and hardware, and painting or other treatment of  
53 interior walls), floor (but not the floor covering, unless the same is damaged as a result of a floor defect  
54 or settling), and the structural elements of any building of which the Premises may be a part;

15 All repairs and replacements on Landlord's part to be performed hereunder shall be at  
16 Landlord's sole cost and expense (and not includable in Common Areas Charges), performed in a good  
17 and workmanlike manner in accordance with all applicable Legal Requirements, and without material  
18 interference with or disruption to the normal conduct of any business operations in the Premises.  
19 Landlord shall give Tenant at least five (5) days' prior notice of any repairs or replacements to, or  
20 which would otherwise affect the normal conduct of any business operations in, the Premises (except  
21 in the case of an emergency posing imminent risk of material harm to persons or property, in which  
22 event Landlord shall only be required to give such notice as is reasonable under the circumstances). If,  
23 in Tenant's reasonable judgment, Landlord's repairs would materially interfere with or disrupt the  
24 normal conduct of any business operations in the Premises, Landlord shall perform such repairs only  
25 after the regular hours of operation of Tenant and any other occupant of the Premises (or any portion  
26 thereof), and Landlord shall reimburse Tenant for the reasonable out-of-pocket costs and expenses  
27 incurred by Tenant in connection with such "after hours" repairs, including, without limitation, utilities  
28 charges and security expenses. In the event Landlord does not reimburse Tenant for any amounts  
29 payable to Tenant hereunder within ten (10) days after Tenant's demand therefor, Tenant shall have the  
30 right (in addition to any rights and remedies to which it may be entitled under this Lease, at law, or in  
31 equity) to offset such amounts against Rent, together with interest thereon at the Lease Interest Rate  
32 from the date of outlay until reimbursement or full satisfaction by credit.

33       Section 9.3    Legal Compliance Work. Except as expressly provided in Section 5.1 above  
34 and this Section 9.3 below, Landlord shall be responsible, at its sole cost and expense (and not  
35 includable in Common Areas Charges), for performing all "**Legal Compliance Work**" (hereinafter  
36 defined). Notwithstanding the foregoing, Tenant shall be responsible, at its sole cost and expense, for  
37 the performance of Legal Compliance Work: (a) pertaining to the interior elements of the Premises  
38 which are neither structural nor comprise the major building systems serving the Premises; or  
39 (b) required solely as a result of Tenant's specific manner of use of the Premises (*i.e.*, are not of  
40 general applicability to tenants and occupants of the Shopping Center); provided, however, that the  
41 foregoing shall not relieve Landlord of its obligations to perform: (x) Landlord's Work in accordance  
42 with all Legal Requirements, and (y) the repairs required in this Lease. As used herein, "**Legal**  
43 **Compliance Work**" shall mean any obligation, addition, alteration, improvement, or rebuilding,  
44 structural or otherwise, to or of the Premises, the Shopping Center, or any part thereof, as applicable,  
45 which may be required by reason of any Legal Requirement.

## ARTICLE 10

INDEMNIFICATION, INSURANCE AND  
WAIVER OF SUBROGATION

## 50 Section 10.1 Mutual Release, Waiver of Subrogation and Mutual Indemnification.

51                   10.1.1 Mutual Waiver of Claims. Landlord and Tenant, on their own behalf and on  
52 behalf of anyone claiming under or through either one by way of subrogation, hereby release and  
53 waive all rights of recovery and causes of action against each other from any and all liability for any  
54 loss or damage to property or resulting from damage to such property (and, in either case, any resulting  
55 loss of business or rental income), whether caused by the negligence or fault of the other party, which

1 is normally insured under Special Form property insurance (formerly known as "All-Risk") and time  
2 element insurance required to be maintained hereunder. In the event either Landlord or Tenant is a  
3 self-insurer or maintains a deductible (as either may be permitted hereunder), then the self-insuring  
4 party or the party maintaining the deductible hereby releases the other party from any liability arising  
5 from any event which would have been covered had the required insurance been obtained and/or the  
6 deductible not been maintained.

7                   10.1.2 Waiver of Subrogation. Landlord and Tenant shall cause each property  
8 insurance policy carried by either of them insuring the Premises, the contents thereof, or the Shopping  
9 Center, to provide that the insurer waives all rights of recovery by way of subrogation or otherwise  
10 against the other party hereto in connection with any loss or damage which is covered by such policy  
11 or that such policy shall otherwise permit, and shall not be voided by the releases provided above.

12                   10.1.3 Mutual Indemnification.

13                   (a) Except as otherwise provided in Subsections 10.1.1 and 10.1.2 above,  
14 Tenant covenants to defend and indemnify Landlord and hold Landlord harmless from and against any  
15 and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, (x) in  
16 connection with loss of life, personal injury and/or damage to property arising from or out of any  
17 occurrence in or upon the Premises, or any part thereof, or (y) occasioned wholly or in part by any act  
18 or omission of Tenant, its agents, contractors, employees, servants, or licensees, except to the extent  
19 such claims, actions, damages, liability and expense are caused by the acts or omissions of Landlord,  
20 its agents, contractors, licensees, employees, or other tenants and occupants, or for which any of said  
21 parties may be statutorily liable.

22                   (b) Except as otherwise provided in Subsections 10.1.1 and 10.1.2 above,  
23 Landlord covenants to defend and indemnify Tenant and hold Tenant harmless from and against any  
24 and all claims, actions, damages, liability and expense, including reasonable attorneys' fees, (x) in  
25 connection with loss of life, personal injury and/or damage to property arising from or out of any  
26 occurrence in or upon any portion(s) of the Shopping Center (excluding the Premises), or (y)  
27 occasioned wholly or in part by any act or omission of Landlord, its agents, contractors, employees,  
28 servants, tenants (other than Tenant), occupants or licensees, except to the extent such claims, actions,  
29 damages, liability and expense are caused by the acts or omissions of Tenant, its agents, contractors,  
30 licensees or employees, or for which any of said parties may be statutorily liable.

31                   Section 10.2 Tenant's Insurance.

32                   10.2.1 Tenant's Insurance. Tenant, at its own cost and expense, shall maintain in full  
33 force and effect from and after the Delivery Date and throughout the Term: (i) commercial general  
34 liability insurance protecting and insuring Tenant, naming Landlord as "additional insured-lessor" for  
35 claims arising out of the use or occupancy of the Premises by Tenant and the obligations assumed by  
36 Tenant under this Lease, and having a combined single limit of liability of not less than Two Million  
37 (\$2,000,000) for bodily injury, death and property damage liability; and (ii) Special Form  
38 (formerly known as "All-Risk") property insurance, on a replacement cost basis, in an amount  
39 adequate to cover the full insurable replacement value of all of Tenant's Property. Tenant may carry  
40 any of its insurance under "blanket policies" covering the Premises and other locations it or any  
41 Affiliate of Tenant owns or leases, provided that: (i) the amount of the total insurance available shall  
42 be at least the protection equivalent to separate policies in the amounts herein required, and (ii) in all  
43 other respects, any such policy or policies shall comply with the applicable provisions of this Article  
44 10.

45                   10.2.2 Self-Insurance. All insurance required to be maintained under this Section 10.2  
46 may be provided under: (i) an individual policy covering this location; (ii) a blanket policy or policies  
47 which includes other liabilities, properties and locations of Tenant or its Affiliates; (iii) a plan of self-  
48 insurance, provided that Tenant or any guarantor of Tenant's obligations under this Lease maintains,  
49 during the period of such self-insurance, a tangible net worth of at least Two Million  
50 (\$2,000,000); or (iv) a combination of any of the foregoing insurance programs. To the extent any  
51 deductible is permitted or allowed as a part of any insurance policy carried by Tenant in compliance  
52 with this Section 10.2, then Tenant shall be deemed to be covering the amount thereof under an  
53 informal plan of self-insurance; provided, however, that in no event shall any deductible exceed Two  
54 Hundred Thousand Dollars (\$200,000) unless Tenant complies with the requirements regarding self-  
55 insurance pursuant to clause (iii) above.

1                   Section 10.3 Landlord's Insurance.

2                   10.3.1 Liability Insurance. Landlord shall maintain in full force and effect on and after  
3 the Effective Date and throughout the Term commercial general liability insurance with regard to the  
4 Common Areas protecting and insuring Landlord, naming Tenant as "additional insured-lessee", and  
5 having a combined single limit of liability of not less than ~~Two Million Dollars (\$2,000,000)~~ for  
6 bodily injury, death and property damage liability. Landlord shall have the right to carry its insurance  
7 under "blanket policies" covering the Shopping Center and other properties provided that: (i) the  
8 amount of the total insurance available shall be at least the protection equivalent to separate policies in  
9 the amounts herein required, and (ii) in all other respects, any such policy or policies shall comply with  
10 the applicable provisions of this Article 10.

11                   10.3.2 Special Form Property Insurance. Landlord shall procure and maintain in full  
12 force and effect on and after the Effective Date and throughout the Term, Special Form (formerly  
13 known as "All-Risk") property insurance (including loss of rents for a minimum period of one (1)  
14 year) and endorsements for coverages for flood, earthquake, windstorm, earth movement [sinkholes],  
15 demolition, increased cost of construction and contingent operation of building laws coverages, on a  
16 replacement cost basis, in an amount adequate to cover the full insurable replacement value of all of  
17 the buildings (including the Premises) and other insurable improvements in the Shopping Center;  
18 provided, however, in no event shall such insurance cover Tenant's Property. All policies required to  
19 be maintained by Landlord pursuant to this Subsection 10.3.2 shall provide that any proceeds thereof  
20 shall be deposited with Landlord's Mortgagee, or if none, to Landlord, in either event to be held in  
21 trust by such party and disbursed only in accordance with the provisions of, and for the purposes set  
22 forth in, Section 11.1 hereof. The property insurance required to be maintained by Landlord pursuant  
23 to this Section shall not have deductibles exceeding One Hundred Thousand Dollars (\$100,000)  
24 without Tenant's prior consent.

25                   10.3.3 Tenant's Pro Rata Share of Insurance Premiums. Tenant shall reimburse  
26 Landlord for Tenant's Pro Rata Share of the reasonable insurance premiums attributable to the policies  
27 required to be maintained by Landlord pursuant to this Section 10.3 as part of Common Areas Charges.  
28 If the rates for any insurance Landlord is required to carry hereunder are increased above the rates that  
29 would be charged for general retail use as a result of the specific use or other activity of any other  
30 occupant of the Shopping Center, the amount of such increase shall be excluded from Common Areas  
31 Charges. To the extent that Landlord receives a dividend, credit, rebate or other return of a premium  
32 which had previously been included in Common Areas Charges, Landlord shall promptly refund  
33 Tenant's Pro Rata Share of such dividend, credit, rebate, or return to Tenant. Tenant's Pro Rata Share  
34 of any insurance premium for any period during the Term which constitutes less than a full calendar  
35 year shall be equitably prorated. The provisions of this Subsection 10.3.3 shall survive the expiration  
36 or earlier termination of this Lease.

37                   Section 10.4 General Insurance Requirements.

38                   10.4.1 All insurance required to be maintained by the parties under this Lease shall be  
39 maintained with insurance companies qualified to do business in the state in which the Shopping  
40 Center is located, and rated at least A-VIII by the most current Best's Key Rating Guide (or its  
41 equivalent, if such Guide ceases to be published). Each party shall use its diligent efforts to have its  
42 insurers provide thirty (30) days [ten (10) days in the event of non-payment of premium] prior notice  
43 to the other party of cancellation or non-renewal of any policy required hereunder. Each party shall  
44 provide to the other duly executed certificates evidencing the insurance coverage described in Sections  
45 10.2.1 and 10.3 above.

46                   10.4.2 The liability insurance requirements under Sections 10.2 and 10.3 above shall be  
47 reviewed by Landlord and Tenant every five (5) years for the purpose of mutually increasing (in  
48 consultation with their respective insurance advisors) the minimum limits of such insurance to limits  
49 which shall be reasonable and customary for similar facilities of like size and operation in accordance  
50 with generally accepted insurance industry standards. The replacement value of the buildings and  
51 other insurable improvements constituting the Shopping Center shall be re-evaluated from time to time  
52 at the request of either Landlord or Tenant.

1

ARTICLE 11

2

3

FIRE AND OTHER CASUALTY;  
EMINENT DOMAIN

4

5 Section 11.1 Fire and Other Casualty.

6

11.1.1 (a) Except as otherwise provided in this Section 11.1, if all or a portion of  
the Premises, the Common Areas (including all improvements thereto) or other buildings in the  
Shopping Center shall be damaged by fire or other casualty, Landlord shall promptly (x) rebuild and  
restore the Premises and the Common Areas to the condition existing immediately prior to such fire or  
other casualty, which restoration shall include all Tenant's Work and all other leasehold improvements  
performed by Tenant, and shall not include any of Tenant's Property, and (y) rebuild and restore at  
least eighty percent (80%) of additional Floor Area (exclusive of the Premises) within the Shopping  
Center to substantially the condition in which same existed immediately prior to such fire or other  
casualty so that same shall be occupied or ready for occupancy following reconstruction. With respect  
to buildings or improvements within the Shopping Center which are damaged by fire or other casualty  
but which are not required to be restored by Landlord, Landlord shall promptly either (a) rebuild and  
restore all or portions of the same to substantially the condition in which they existed immediately  
prior to such fire or other casualty, or (b) raze the remaining portions of such buildings or  
improvements not rebuilt, remove all debris resulting therefrom, and pave such areas for parking or  
landscape such areas in a sightly manner. The proceeds of the policies required to be obtained and  
maintained by Landlord pursuant to Subsection 10.3.2 hereof shall, to the extent necessary, be used for  
the performance of such rebuilding and restoration work. In the event such insurance proceeds are  
insufficient to complete such work, Landlord shall provide the balance of the amount necessary to  
rebuild or restore the Shopping Center in the manner provided in this Section 11.1. If an uninsured  
casualty (i.e., a casualty not covered by the either the insurance required to be maintained, or the  
insurance actually maintained, by Landlord pursuant to Section 10.3 above) occurs and Landlord was  
not required to carry insurance covering such a casualty under the terms of this Lease, and provided  
that (I) more than fifty percent (50%) of the Shopping Center shall have been damaged in such  
casualty, and (II) more than fifty percent (50%) of the Premises are damaged or destroyed, Landlord  
shall have the option of not rebuilding the Shopping Center provided Landlord terminates the leases of  
all similarly situated tenants, in which case Landlord shall promptly notify Tenant thereof, and this  
Lease shall terminate not less than thirty (30) days after Tenant's receipt of said Landlord's notice.  
Notwithstanding the foregoing, if within thirty (30) days following Tenant's receipt of Landlord's non-  
rebuild and termination notice Tenant notifies Landlord that it wants Landlord to rebuild the Premises,  
then Landlord shall rebuild or restore (as applicable) all of the Premises, and not less than Fifty  
Thousand (50,000) square feet of leasable Floor Area of the Casualty Rebuild Area (as shown on  
Exhibit B hereto) in addition to the Premises, to substantially the same condition that existed  
immediately prior to the casualty. With respect to the costs of the restoration or rebuilding as provided  
in the preceding sentence, Landlord shall be responsible to pay for the initial \_\_\_\_\_,  
\_\_\_\_\_ of such costs and Tenant shall provide the funds, in  
excess of said \$250,000.00, for such restoration or rebuilding.

42

(b) Notwithstanding the foregoing, if any portion of the Premises are so  
damaged or destroyed, Tenant shall have the right to require Landlord to make changes to the Premises  
in the course of, and as part of, such rebuilding or restoration work. The principles set forth  
Subsections 8.1.1 and 8.1.2 shall control as to which changes Landlord shall have the right to consent,  
and which changes shall not require Landlord's consent. If the net cost and expense of such rebuilding  
or restoration work is increased solely as a result of such changes (taking into consideration any and all  
actual reduced and additional costs resulting from such changes and/or other cost savings arising  
therefrom), then Tenant shall pay to Landlord, as Additional Rent, the amount of such net increase,  
which amount shall be due and payable within thirty (30) days after Landlord has delivered to Tenant  
backup information evidencing such increase (including, without limitation, received invoices) as may  
be reasonably required by Tenant (but in no event earlier than the occurrence of the date on which  
possession of the restored areas of the Premises are delivered to Tenant). To the extent that Landlord's  
substantial completion of such rebuilding or restoration work is delayed solely as a result of such  
changes (taking into consideration any and all reasonable time savings to Landlord resulting from such  
changes), then the applicable period(s) specified in Section 11.1.2 below shall be appropriately  
adjusted to the extent of such net delay.

58

59

(c) If, in Tenant's reasonable business judgment (exercised in good faith),  
any damage to the Premises renders all or any portion of the Premises unusable for the conduct of

1 Tenant's business or, in the case of damage to the Shopping Center, materially interferes with the  
2 normal conduct of any business operations in the Premises, the Rent shall be equitably reduced or  
3 totally abated based upon the extent to which the remaining portion of the Premises may, in Tenant's  
4 reasonable judgment, be utilized for its normal conduct of business.

### 5 11.1.2 In the event that:

(a) Landlord does not commence the repair and restoration work to the Premises, the Common Areas, or other buildings in the Shopping Center as required pursuant to this Section 11.1 within ninety (90) days after the date of such destruction, or thereafter fails to diligently pursue the completion of such repair and restoration work (subject to such period as may be reasonably necessary for the adjustment of insurance proceeds, not to exceed thirty (30) days in the aggregate); or

17 then, in either of such events, Tenant shall have the right, at its sole discretion and option, to:

19 (i) after giving thirty (30) days' prior notice to Landlord (and  
20 Landlord's continued failure to commence and diligently pursue such repairs and restoration  
21 work to completion), perform or complete, as the case may be, said work (or any portion  
22 thereof) on Landlord's behalf and at the sole cost of Landlord, which reasonable cost Landlord  
23 shall pay to Tenant during the course of such repairs within ten (10) days after Tenant's  
24 delivery to Landlord of an invoice therefor and, in default of any such payment, Tenant shall  
25 have the right to offset the amount thereof, together with interest at the Lease Interest Rate,  
26 against the Rent next accruing hereunder (it being agreed, without limiting the foregoing  
27 provisions of this Subsection 11.1.2, that at Tenant's election all insurance proceeds paid or  
28 payable to Landlord or Landlord's Mortgagee pursuant to Subsection 10.3 hereof shall be paid  
29 (or, as applicable, in turn delivered) directly to Tenant, to be applied to such work by Tenant as  
30 same is being performed); or

31 (ii) seek to obtain specific performance of Landlord's repair and  
32 restoration obligations pursuant to the laws of the state in which the Shopping Center is  
33 located; or

If the Premises are substantially destroyed by fire or other casualty during the last two (2) years of the Term to the extent of more than one-third (1/3) of the Floor Area thereof, Landlord or Tenant shall each have the right to terminate this Lease as of the date of such damage or destruction by giving notice within thirty (30) days following such damage or destruction, but Tenant may negate any termination by Landlord by agreeing to extend the Term for an additional five (5) year period by exercising an option pursuant to Subsection 2.2.2 hereof, if available, within ten (10) days after receipt of the termination notice from Landlord.

48 Section 11.2 Eminent Domain

49                   11.2.1 As used in this Section 11.2, "**Taking**" or "**Taken**" shall mean a taking for any  
50 public or quasi-public use by any lawful power or authority by exercise of the right of condemnation or  
51 eminent domain or by agreement between Landlord and those having the authority to exercise such  
52 right.

53 11.2.2 If all of the Premises shall be Taken, this Lease shall terminate as of the date of  
54 vesting of title or transfer of possession, whichever is earlier, without further liability on the part of

1 either Landlord or Tenant, except for an adjustment between the parties for the Rent payable by Tenant  
2 hereunder.

3 11.2.3 In the event that:

4 (a) any portion of the Premises shall be Taken so that it is commercially  
5 unreasonable or unfeasible for Tenant, in its reasonable judgment, to conduct its normal business in the  
6 Premises;

7 (b) as a consequence of any Taking: (i) portions of the Shopping Center  
8 shall be divided or separated in any manner that it materially interferes with parking, visibility, or  
9 access to the Premises from other portions of the Shopping Center, or (ii) the Shopping Center no  
10 longer has at least two (2) entrances from Leah Avenue, at least one (1) entrance from Cottonwood  
11 Parkway, an entrance from the IH-35 frontage road between the premises designated as "Discount Tire  
12 Co." and the premises designated as "Lot 5" on Exhibit B, and an entrance at the intersection of the  
13 IH-35 frontage road and McKinley Place Drive, and as a result, it is not commercially reasonable or  
14 feasible for Tenant, in its reasonable judgment, to conduct its normal business in the Premises;

15 (c) there occurs, in Tenant's reasonable judgment, a denial of adequate  
16 access to the Critical Area at the grade of any street adjoining the Shopping Center or to any easement  
17 granted under this Lease, whether or not a Taking shall have occurred;

18 (d) any portion of the Shopping Center shall be Taken which materially  
19 interferes with parking, visibility or access to the Premises, and as a result of such taking it is  
20 commercially unreasonable or unfeasible for Tenant, in its reasonable judgment, to conduct its normal  
21 business in the Premises;

22 (e) more than twenty-five (25%) percent of the total Floor Area of all of the  
23 buildings in the Shopping Center (other than the Premises) are Taken; or

24 (f) so many of the parking spaces in the Shopping Center are Taken such  
25 that there are fewer than (i) five (5.0) parking spaces for every one thousand (1,000) square feet of  
26 Floor Area in the Shopping Center, or (ii) the number of parking spaces required by applicable Legal  
27 Requirements;

28 then, in any of such events, Tenant shall have the right to terminate this Lease by giving at least sixty  
29 (60) days' prior notice to Landlord within sixty (60) days of any such event, in which event this Lease  
30 shall terminate without any further liability on the part of either Landlord or Tenant, except for an  
31 adjustment between the parties for the Rent payable by Tenant hereunder and for payment to Tenant  
32 for its share of the award for the taking pursuant to Subsection 11.2.5 below. Upon any partial Taking  
33 of the Premises, the Rent shall be equitably reduced or totally abated based upon the extent to which  
34 the remaining portion of the Premises may, in Tenant's reasonable judgment, be utilized for its normal  
35 conduct of business.

36  
37 11.2.4 If this Lease is not terminated pursuant to this Section 11.2, Landlord, at its sole  
38 cost and expense, within a reasonable period of time after such Taking, shall repair and restore the area  
39 not so Taken to tenantable condition, similar in physical appearance to the condition of the area  
40 immediately prior to the Taking, pursuant to plans and specifications approved by Tenant (which  
41 repair and restoration shall, as applicable, include all Tenant's Work and all other leasehold  
42 improvements performed by Tenant; provided, however, that Landlord shall not be obligated to repair  
43 or restore Tenant's Property), and any and all amounts awarded to Landlord for any Taking shall be  
44 made available to and used by Landlord for any rebuilding or restoration which it is required to  
45 perform hereunder. During the period of such repairs and restoration, all Rent shall abate to the extent  
46 that the Premises may not, in Tenant's reasonable judgment, be used by Tenant for the normal conduct  
47 of its business. Such abatement shall terminate in accordance with the terms of Section 11.3 below.

48  
49 11.2.5 In connection with any Taking or partial Taking of the Premises, Tenant shall be  
50 entitled to claim an award for loss of business, leasehold improvements, fixtures and equipment and  
51 removal and reinstallation costs; provided, however, that no award shall be payable to Tenant which  
reduces the award payable to Landlord for its fee interest in the Premises.

52  
53 11.2.6 Any dispute between the parties with respect to this Section 11.2 shall be  
resolved by arbitration in accordance with the provisions of Section 16.3 below.

1           Section 11.3 Abatement of Rent Charges. Notwithstanding any other provisions of this  
2 Lease, if the Fixed Rent and Additional Rent payable by Tenant hereunder shall be abated pursuant to  
3 Sections 11.1 or 11.2 above, such abatement shall terminate upon the first to occur of: (a) the date on  
4 which Tenant shall reopen the Premises to the general public for business; or (b) the expiration of the  
5 period which is sixty (60) days after Landlord shall have completed such repairs and restoration work  
6 as Landlord is obligated to perform hereunder and the interference with the operation of business in the  
7 Premises has ceased.

## ARTICLE 12

#### COVENANTS, REPRESENTATIONS AND WARRANTIES

11       Section 12.1 **Quiet Enjoyment**. Tenant shall peaceably and quietly have, hold, occupy and  
12       enjoy the Premises for the Term, without hindrance from Landlord or any party claiming by, through,  
13       or under Landlord. Nothing in this Section 12.1 shall be deemed to in any way modify or limit  
14       Landlord's remedies upon an Event of Default by Tenant.

15       Section 12.2 Authority. Tenant and Landlord each warrant and represent that the person(s)  
16 signing this Lease on their behalf has authority to enter into this Lease and to bind Tenant and  
17 Landlord, respectively, to the terms, covenants and conditions contained herein. The submission of  
18 this Lease to each party hereto shall be for examination and negotiation purposes only, and does not  
19 and shall not constitute a reservation of or an obligation of Tenant to lease, or otherwise create any  
20 interest of Tenant in, the Premises or any other premises situated in the Shopping Center unless and  
21 until the Lease is fully executed and delivered by Tenant and Landlord.

22                   Section 12.3 Landlord's Covenants, Warranties and Representations. To induce Tenant to  
23 execute this Lease, and in consideration thereof, Landlord covenants, warrants and represents to  
24 Tenant as follows:

25 (a) As of the Effective Date, Landlord has, and as of the Delivery Date  
26 Landlord shall have, good and indefeasible fee simple title to the entire Shopping Center, free and clear  
27 of all easements, restrictions, liens, encumbrances, leases and the like except for the encumbrances  
28 described on Exhibit E hereto:

29 (b) In the event the legal description of the Shopping Center described in  
30 Exhibit A hereto indicates that the Shopping Center is composed of more than one parcel or lot,  
31 Landlord represents that there exist no strips or gores between such parcels or lots which are not  
32 owned by Landlord;

33 (c) Except for the approval of Lowe's which is required under Section 3.1 of  
34 the Lowe's OEA and which has already been obtained, no third party consents or approvals are  
35 required in order for Landlord to enter into this Lease, or for the performance of Landlord's Work and  
36 Tenant's Work (excluding, as of the Effective Date, governmental permits and approvals):

37 (d) Tenant's use of the Premises for sale of "Permitted Items" (defined in  
38 Section 1.1.27 above) will not violate any exclusive provision or prohibited use restriction granted to  
39 any other tenant or occupant in the Shopping Center.

40 (e) The Shopping Center now has, and, on the Delivery Date, shall have,  
41 access to and from the IH-35 frontage road, Cottonwood Parkway, and Leah Avenue, as shown on  
42 Exhibit B hereto, for the passage of vehicular traffic:

43 (f) This Lease does not violate the provisions of any instrument heretofore  
44 executed and/or binding on Landlord, or affecting or encumbering the Shopping Center, or the  
45 Premises, and no rights granted by Landlord to Tenant under the terms of this Lease conflict with any  
46 rights granted by Landlord to any other tenant or occupant in the Shopping Center;

47 (g) From and after the Delivery Date, there shall be no restrictions or other  
48 legal impediments imposed by any public or private instrument which would prevent: (i) the use of the  
49 Premises for the Permitted Use; (ii) the use of the parking facilities, access roads, and other Common  
50 Areas in the manner contemplated by this Lease; or (iii) the performance of Tenant's Work.

51 (h) As of the Effective Date, there are no sign ordinances, restrictive  
52 covenants, uniform sign plans or other signage restrictions which would prevent the Premises from

1 having the signage (including, without limitation, the square foot area and size of letters) as depicted  
2 on Exhibit D-1 and Exhibit F hereof.

3 (i) As of the Effective Date there is no Related Land in existence and as of  
4 the Delivery Date there will not be any Related Land in existence (or, if there shall be Related Land in  
5 existence, Landlord shall promptly notify Tenant thereof and promptly execute any recordable  
6 instrument reasonably requested by Tenant which memorializes the provisions of this Lease pertaining  
7 to or otherwise affecting Related Land);

8 (j) Attached hereto as Exhibit K-2 is a complete list of all fully executed  
9 and delivered leases in effect on the Effective Date with respect to the Shopping Center (the “*Existing*  
10 *Leases*”); and

11 (k) Landlord shall promptly forward to Tenant any notice or other  
12 communication received by Landlord from any owner of property adjoining or adjacent to the  
13 Shopping Center or from any municipal or other governmental authority, in connection with any  
14 hearing or other administrative proceeding relating to any proposed zoning, building code, signage, or  
15 related variance affecting the Shopping Center or any adjoining or adjacent property, which, if granted,  
16 could adversely affect Tenant’s use or occupancy of the Premises, the conduct of Tenant’s business  
17 therein, or Tenant’s rights and benefits under this Lease. Landlord, at its sole cost and expense, shall  
18 appear in such proceeding and shall contest such proposed variance. If Landlord fails so to appear and  
19 contest such proposed variance after receiving five (5) days’ notice from Tenant (or such shorter notice  
20 as may be practicable under the circumstances), then Tenant shall be entitled (but shall not be  
21 obligated to), in its own name and/or in the name of Landlord, to appear in such proceeding, in which  
22 event Landlord shall fully cooperate with Tenant, provide such information, and execute any  
23 reasonable documents or other instruments as Tenant may reasonably request in connection with any  
24 such proceeding.

25 Section 12.4 Environmental Matters.

26 12.4.1 Definitions.

27 (a) As used herein, the term “*Environmental Laws*” shall mean any and all  
28 Legal Requirements concerning the protection of the environment, human health or safety.

29 (b) As used herein, the term “*Hazardous Substances*” shall mean each and  
30 every element, compound, material, mixture, substance, waste, hazardous substance, hazardous waste,  
31 hazardous material, toxic substance, pollutant or contaminant either as those terms are defined in any  
32 of the Environmental Laws or the presence of which may cause liability at common law, including,  
33 without limitation, asbestos and/or asbestos-containing products, whether or not currently friable.

34 (c) As used herein, the term “*Environmental Notice*” shall mean a  
35 summons, citation, directive, order, claim, notice, litigation, investigation, judgment, legal pleading,  
36 letter or other communication, written or oral, actual or threatened, from the United States  
37 Environmental Protection Agency or other federal, state or local governmental agency or authority, or  
38 any other private individual or entity concerning (i) any Hazardous Substances at, on, in, under or  
39 emanating from the Premises, the Shopping Center or any contiguous property; (ii) any violation or  
40 potential violation of Environmental Laws at the Premises, the Shopping Center or any contiguous  
41 property; or (iii) any underground storage tanks on the Premises or the Shopping Center.

42 (d) As used herein, the term “*Releasing*” or “*Release*” shall mean releasing,  
43 spilling, leaking, discharging, disposing or dumping or otherwise introducing any substance into the  
44 environment or into any building or other improvements in violation of Environmental Laws.

45 (e) As used herein, the term “*Compliance Costs*” shall mean any and all  
46 costs incurred by a party in complying with applicable Environmental Laws, including, without  
47 limitation, consultant’s and engineer’s fees; laboratory costs; contractor’s and subcontractor’s fees;  
48 application and filing fees; costs of investigation, monitoring or cleanup of soil or other substrate,  
49 surface water, groundwater, or buildings or other improvements; equipment costs; disposal fees; costs  
50 of operation and maintenance of equipment; legal fees; other governmental fees or costs; interest at the  
51 Lease Interest Rate from the date of expenditure until paid in full; and other similar or related costs.

52 (f) As used herein, the term “*Tenant Related Parties*” shall mean Tenant’s  
53 agents, servants, employees, contractors or licensees\

1                   12.4.2 Compliance with Environmental Laws. Tenant shall comply with all applicable  
2 requirements of Environmental Laws governing its use of, and operations at, the Shopping Center and  
3 the Premises. Landlord shall comply with all applicable requirements of Environmental Laws relating  
4 to the Shopping Center and the Premises, except to the extent such requirements arise from Tenant's  
5 operations thereon or from "Tenant Releases" (as defined in Subsection 12.4.3 below).

6                   12.4.3 Responsibility for Releases of Hazardous Substances.

7                   (a) Notwithstanding any other provision of this Lease, Tenant shall only be  
8 liable for any Release of Hazardous Substances at, on, in, under or emanating from the Premises or  
9 Shopping Center which were caused by Tenant or Tenant Related Parties (hereinafter "*Tenant*  
10 *Releases*"), including, without limitation, any Compliance Costs required to address Tenant Releases.  
11 As between Landlord and Tenant, Landlord shall be liable for any Hazardous Substances at, on, in,  
12 under or emanating from the Premises or Shopping Center, including, without limitation, any  
13 Compliance Costs attributable to such Hazardous Substances, unless the Hazardous Substances are  
14 caused by Tenant Releases. No third party shall be a third party beneficiary with respect to the  
15 immediately preceding sentence. Landlord shall not be liable with respect to Hazardous Substances  
16 which are introduced to the Shopping Center or the Premises after the Delivery Date by any party other  
17 than Landlord or an Affiliate of Landlord, or any contractor, employee, agent or representative of  
18 Landlord, provided that: (i) Landlord shall otherwise comply with its duties and obligations under this  
19 Section 12.4 (including, without limitation, with respect to the Compliance Costs referenced above)  
20 and, as between Landlord and Tenant, shall be liable with respect to Hazardous Substances as  
21 otherwise provided in this Section 12.4.3(a), (ii) upon request by Tenant, Landlord shall, at its sole  
22 expense, commence appropriate actions or proceedings against the party who introduced (or was  
23 legally responsible for the introduction of) such Hazardous Substances to the Shopping Center or the  
24 Premises and thereafter diligently pursue same, and (iii) without limiting Tenant's other rights and  
25 remedies under this Lease, should the introduction of Hazardous Substances as aforesaid interfere, in  
26 more than a *de minimis* manner, with the normal conduct of Tenant's business at the Premises, its use  
27 and enjoyment of the Common Areas, or Tenant's other rights and benefits under this Lease, then  
28 Tenant shall be entitled to an equitable abatement of Rent. In the event such interference continues for  
29 a period of one hundred twenty (120) days after discovery of such Hazardous Materials and Landlord  
30 is unable to remediate (or cause the remediation of) such Hazardous Substances as required by law  
31 within such one hundred twenty (120) days, Tenant shall be entitled to terminate this Lease at any time  
32 prior to the completion of such remediation upon thirty (30) days prior notice to Landlord.

33                   (b) Except in the event of an emergency or if compelled by applicable  
34 governmental authority, any work performed by Landlord relating to Hazardous Substances shall be  
35 performed by Landlord at any time other than during the months of August, November and December,  
36 and shall be undertaken in such a manner, using commercially reasonable efforts, so as to (i) not  
37 adversely affect ingress to or egress from the Shopping Center, (ii) have no adverse effect on the  
38 visibility of the Premises or any signs which contain Tenant's name, and (iii) not otherwise materially  
39 interfere with the normal conduct of any business operations in the Premises.

40                   12.4.4 Standards. Except as expressly provided herein, the parties agree that any  
41 investigation or remediation of Hazardous Substances, or cure of a violation of Environmental Laws,  
42 required to be conducted at the Premises or Shopping Center shall be no more stringent than necessary  
43 to meet the minimum standards of Environmental Laws applicable to properties used in the manner the  
44 Shopping Center is being used.

45                   12.4.5 Landlord's Representations and Warranties. Landlord represents and warrants  
46 that: (i) Landlord has received no Environmental Notices concerning the Shopping Center, the  
47 Premises or any contiguous properties; (ii) Landlord has no knowledge of, and has received no notice  
48 of, any current uncured violation, or potential or alleged violation, of any Legal Requirement,  
49 including, without limitation, Environmental Laws, affecting the Shopping Center, the Premises or any  
50 contiguous properties, regardless of whether same has been cured; and (iii) to the best of Landlord's  
51 knowledge, except as set forth in that certain Phase I Environmental Site Assessment, dated February  
52 2, 2005, conducted by Integrated Testing and Engineering Company of San Antonio, L.P., Project No.  
53 053101.esa: (A) no Hazardous Substances are located at, on, in, under or emanating from the Shopping  
54 Center, the Premises or any contiguous properties; and (B) no underground storage tank exists at the  
55 Shopping Center or the Premises. The foregoing representations and warranties shall in no way serve  
56 to vitiate Landlord's obligations under this Article 12.

1                   12.4.6 Documents. Each party shall immediately notify the other party of the notifying  
2 party's receipt of an Environmental Notice.

3                   12.4.7 Indemnity. Each party to this Lease shall indemnify, defend and hold the other  
4 party, and its agents, servants, shareholders, directors, officers, partners, members and employees  
5 harmless from any and all claims, losses, expenses, costs, lawsuits, actions, administrative  
6 proceedings, damage, orders, judgments, penalties and liabilities of any nature whatsoever, including,  
7 without limitation, reasonable attorneys' fees (incurred to enforce this indemnity or for any other  
8 purpose) and Compliance Costs, arising from (i) the indemnifying party's breach of any of its  
9 representations, warranties, covenants or other obligations under this Section 12.4; (ii) Hazardous  
10 Substances for which the indemnifying party is liable under this Section 12.4; or (iii) violations of  
11 Environmental Laws for which the indemnifying party is liable under this Section 12.4.

12                  12.4.8 Survival. The obligations of the parties under this Section 12.4 shall survive the  
13 renewal, expiration, breach or earlier termination of this Lease.

14                  12.4.9 Conflict. In the event of any conflict between the provisions of this Section 12.4  
15 and any other provision of this Lease, the provisions of this Section 12.4 shall control.

16                  Section 12.5 OEA.

17                  12.5.1 As used in this Lease, the term "**OEA**" shall mean: (i) that certain Declaration  
18 of Covenants, Conditions and Restrictions by and between Mary Ann Hood, Trustee and Lowe's  
19 Home Centers, Inc., a North Carolina corporation, dated as of May 24, 1996 and recorded on May 28,  
20 1996 in the Official Public Records of Hays County, State of Texas (the "*Clerk's Office*") in Volume  
21 1229 at Page 830, as amended pursuant to that certain: (a) First Amendment to Declaration of  
22 Covenants, Conditions and Restrictions, dated as of June 20, 2005, by and between Mary Ann Hood,  
23 Trustee and Lowe's Home Centers, Inc., recorded in the Clerk's Office in Volume 2716, Page 758,  
24 (b) Acknowledgement Relating to Declaration of Covenants, Conditions and Restrictions (Jack in the  
25 Box), dated June 28, 2005, by Engineer Business Center, LLC, recorded in the Clerk's Office in  
26 Volume 2716, Page 733, (c) Acknowledgement Relating to Declaration of Covenants, Conditions and  
27 Restrictions (Shell), dated June 27, 2005, by CNL APP Partners, L.P., recorded in the Clerk's Office in  
28 Volume 2716, Page 712, (d) Acknowledgement Relating to Declaration of Covenants, Conditions and  
29 Restrictions (Discount Tire), dated June 9, 2005, by Halle Properties, L.L.C., recorded in the Clerk's  
30 Office in Volume 2716, Page 725, and (e) Acknowledgement Relating to Declaration of Covenants,  
31 Conditions and Restrictions (Centurytel), dated June 10, 2005, by Centurytel of San Marcos, Inc.,  
32 recorded in the Clerk's Office in Volume 2716, Page 752 (collectively, the "*Lowe's OEA*"); (ii) that  
33 certain Reciprocal Easement Agreement by and between Mary Ann Hood, Trustee and PBA  
34 Development, Inc., a Texas corporation, dated as of June 19, 1998 and recorded on June 22, 1998 in  
35 the Clerk's Office in Volume 1426 at Page 1, as amended and/or acknowledged pursuant to that  
36 certain: (1) First Amendment to Reciprocal Easement Agreement, dated July 1, 2005, by and between  
37 Lincoln PO Red Oak Village, L.P. and Texas Cinema Corporation, recorded in the Clerk's Office in  
38 Volume 2750, Page 712, (2) Acknowledgement Relating to Reciprocal Easement Agreement (Jack in  
39 the Box), dated June 28, 2005, by Engineer Business Center, LLC, recorded in the Clerk's Office in  
40 Volume 2716, Page 795, (3) Acknowledgement Relating to Reciprocal Easement Agreement (Shell),  
41 dated June 27, 2005, by CNL APP Partners, LP, recorded in the Clerk's Office in Volume 2716, Page  
42 774, (4) Acknowledgement Relating to Reciprocal Easement Agreement (Discount Tire), dated June 9,  
43 2005, by Halle Properties, L.L.C., recorded in the Clerk's Office in Volume 2716, Page 787, and  
44 (5) Acknowledgement Relating to Reciprocal Easement Agreement (Centurytel), dated June 10, 2005,  
45 by Centurytel of San Marcos, Inc., recorded in the Clerk's Office in Volume 2716, Page 805  
46 (collectively, the "*PBA OEA*"); and (iii) if Sam's shall acquire the Sam's Parcel, that certain  
47 Easements with Covenants and Restrictions Affecting Land, a form of which is attached hereto as  
48 Exhibit O (the "*Sam's OEA*"). Any changes to the Sam's OEA from that which is attached hereto as  
49 Exhibit O that could diminish the rights or increase the obligations of Tenant thereunder or under this  
50 Lease, or could adversely affect Tenant's use or occupancy of the Premises (including, without  
51 limitation, access thereto [inclusive of the access to and from Cottonwood Parkway as shown on  
52 Exhibit B hereto]) or the conduct of Tenant's business therein, shall be subject to Tenant's prior  
53 written consent, which consent may be withheld in its sole and absolute discretion. Without limiting  
54 the foregoing (and subject to the provisions of Section 23.20 below), if Sam's shall not acquire the  
55 Sam's Parcel as of the Delivery Date, and if Landlord shall, from and after the Delivery Date, convey  
56 the Sam's Parcel (or any portion thereof) to any third party (including, without limitation, any Affiliate  
57 of Landlord), then, Landlord shall be permitted to enter into a reciprocal easement agreement with  
58 such third-party provided that in no event shall such agreement diminish the rights or increase the

1 obligations of Tenant thereunder or under this Lease, adversely affect Tenant's use or occupancy of the  
2 Premises (including, without limitation, access thereto [inclusive of the access to and from  
3 Cottonwood Parkway as shown on Exhibit B hereto]) or the conduct of Tenant's business therein.

4 12.5.2 Landlord covenants, represents and warrants to Tenant that: (i) the OEAs have  
5 not been modified, amended or terminated; (ii) except for the Sam's OEA, the OEAs are currently in  
6 full force and effect; (iii) to its actual knowledge as of the date hereof, no default under the any of  
7 OEAs exists thereunder beyond any applicable notice and cure period; and (iv) the OEAs are, and shall  
8 remain, superior in lien to all mortgages and related liens affecting the Shopping Center and all other  
9 land which is encumbered by the OEAs. Landlord and Tenant each acknowledge that this Lease is  
10 made and shall continue to be subject and subordinate to the OEAs, subject to the provisions of this  
11 Section 12.5. Tenant shall comply with the terms and conditions of the OEAs to the extent same  
12 affects the Premises (it being agreed that Tenant shall not be obligated to expend any sums in  
13 connection with such compliance unless there is an independent, specific and express obligation of  
14 Tenant under this Lease that requires the expenditure of funds in order to satisfy such independent,  
15 specific and express Lease obligation).

16 12.5.3 Landlord shall, during the Term: (i) perform and observe all of the terms,  
17 covenants, provisions and conditions of the OEAs on Landlord's part to be performed and observed;  
18 (ii) defend, indemnify and hold harmless Tenant from and against any and all claims, demands, causes  
19 of action, suits, damages, liabilities, and expenses of any nature arising out of or in connection with the  
20 enforcement of, or a claimed breach by, Landlord of any covenant, term, condition, or provision of the  
21 OEAs; and (iii) diligently enforce, at its sole expense, the covenants, agreements, and obligations of  
22 the OEAs.

23 12.5.4 Whenever, pursuant to the OEAs, the consent or approval of Landlord shall be  
24 required by or requested, and to the extent Landlord has the legal right to withhold its consent or  
25 approval, and such consent or approval could diminish the rights or increase the obligations of Tenant  
26 thereunder or under this Lease, or could adversely affect Tenant's use or occupancy of the Premises, or  
27 the conduct of Tenant's business therein, such consent or approval shall not be granted without the  
28 prior consent of Tenant, which consent may be withheld in its sole and absolute discretion.

29 12.5.5 Landlord shall, immediately upon receipt, forward to Tenant and Tenant's  
30 leasehold mortgagee, if any, a copy of any and all notices and/or demands received by Landlord under  
31 or pursuant to any of the OEAs, which relate to, or could adversely affect, Tenant's use or occupancy  
32 of the Premises, the conduct of Tenant's business therein, or Tenant's rights pursuant to this Lease.

33 12.5.6 Landlord shall not amend, or modify any of the OEAs if such amendment or  
34 modification could diminish the rights or increase the obligations of Tenant thereunder or under this  
35 Lease, or could adversely affect Tenant's use or occupancy of the Premises or the conduct of Tenant's  
36 business therein, nor shall Landlord terminate any of the OEAs.

37 12.5.7 In the event Landlord defaults in the performance of any of its obligations under  
38 any of the OEAs or fails to enforce the obligations of any other obligee under any of the OEAs, and  
39 such default or failure to enforce could adversely affect Tenant's rights thereunder or under this Lease,  
40 Tenant's Work, Tenant's use or occupancy of the Premises or the conduct of Tenant's business therein,  
41 Tenant may, but shall not be obligated to, after thirty (30) days prior written notice to Landlord (except  
42 in the event of emergency, in which case only such notice as is reasonable under the circumstances  
43 shall be required) and Landlord's failure to cure the default within that period (or, if thirty (30) days  
44 shall be insufficient to effect the cure, if Landlord shall have failed to commence to cure the default  
45 within the thirty (30) day period, and/or thereafter fail to diligently pursue same to completion), cure  
46 any default by Landlord under the OEAs and/or enforce, in its own name, at Landlord's expense, the  
47 obligations of any other obligee under the OEAs. Landlord shall, upon demand, reimburse Tenant for  
48 the reasonable costs incurred by Tenant in performing any of Landlord's obligations under the OEAs  
49 or enforcing the obligations of any obligee under the OEAs, together with interest thereon at the Lease  
50 Interest Rate, and failing such reimbursement, Tenant shall have the right (in addition to any rights and  
51 remedies to which it may be entitled under this Lease, at law, or in equity), upon ten (10) days' prior  
52 notice to Landlord, to offset such costs from the next succeeding payment or payments of any Rent due  
53 hereunder, together with interest thereon at the Lease Interest Rate from the date of outlay until  
54 reimbursement or full satisfaction by credit.

55 12.5.8 As between Landlord and Tenant, in the event of any conflict between the OEAs  
56 and this Lease, this Lease shall in all respects control.

1           12.5.9 Landlord shall obtain any third-party approvals required under any of the OEAs  
2 for the performance of Landlord's Work (including, without limitation, Tenant's elevations and  
3 signage, as shown on Exhibit D-1 and Exhibit F hereto), Tenant's Work, and the operation of Tenant's  
4 business in the Premises.

5           Section 12.6 Intentionally Omitted.

6           ARTICLE 13

7           USE AND RESTRICTIONS

8           Section 13.1 Permitted and Prohibited Uses.

9           13.1.1 Tenant's Permitted Use. The Premises may be used and occupied for the  
10 Permitted Use (defined in Subsection 1.1.27 above). Tenant shall not use the Premises for any of the  
11 "Prohibited Uses" (defined in Exhibit M hereto annexed) or the "Existing Exclusives" (hereinafter  
12 defined in Subsection 13.3.1), to the extent then applicable.

13           13.1.2 Prohibited Uses. Landlord shall construct, lease, operate, maintain and manage  
14 the Shopping Center as a first-class shopping center comparable to other first-class shopping centers in  
15 the state in which the Shopping Center is located. Landlord shall not lease, rent or occupy or permit  
16 any portion of the Shopping Center to be occupied for any of the "Prohibited Uses" (defined in  
17 Exhibit M hereto annexed). Landlord shall not lease, rent or occupy or permit any portion of any land  
18 (the "Related Land") contiguous or adjacent to the Shopping Center (including, without limitation,  
19 any land that would be contiguous or adjacent to the Shopping Center but for any intervening road,  
20 street, alley or highway) now or hereafter owned or controlled by Landlord or its Affiliate(s), to be  
21 occupied for the following Prohibited Uses listed on Exhibit M hereto: Items 1, 2, 4, 5, 14, 15, 21, 22  
22 and 25. Notwithstanding the foregoing, the provisions of this Subsection 13.1.2 shall not apply to any  
23 business existing on any Related Land owned or controlled by a person or entity which: (i) was  
24 previously, but is no longer, the Landlord hereunder, or (ii) at the time it became Landlord hereunder,  
25 already owned or controlled such Related Land (excluding, however, the Landlord originally named  
26 herein and its Affiliates). Without limiting the generality of the foregoing, in no event shall the Sam's  
27 Parcel be deemed to be Related Land if and when the Sam's Parcel is transferred from Landlord to  
28 Sam's and for so long as the Sam's Parcel is owned by Sam's.

29           Section 13.2 Tenant's Exclusive in Center. To induce Tenant to execute this Lease, and  
30 subject to all of the terms and provisions of this Section 13.2, Landlord covenants and agrees as  
31 follows:

32           13.2.1 Landlord shall not lease, rent or occupy (or permit any other premises in the  
33 Shopping Center or on any Related Land to be occupied), whether by a tenant, sublessee, assignee,  
34 licensee or other occupant or itself, for the sale, rental or distribution, at retail or at wholesale, either  
35 singly or in any combination, of items contained in any of the following respective categories of  
36 merchandise: (a) linens and domestics; (b) bathroom items (excluding plumbing hardware);  
37 (c) housewares (excluding furniture, and major appliances or "white goods"); (d) frames and wall art  
38 (provided that a fine art gallery shall not be precluded); (e) window treatments; and/or (f) closet,  
39 shelving and storage items (which items, either singly or in any combination, are hereinafter referred to  
40 as the "Exclusive Items"). Notwithstanding the foregoing, any tenant or subtenant in the Shopping  
41 Center or the Related Land shall have the right to utilize its respective premises for the sale, rental  
42 and/or distribution of Exclusive Items within an aggregate area (which shall include an allocable  
43 portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser  
44 of (x) ten percent (10%) of the Floor Area of such tenant's or subtenant's premises, or (y) two  
45 thousand (2,000) square feet of Floor Area within such tenant's or subtenant's premises. [For example  
46 only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area  
47 could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its  
48 entire demised premises in which any and all Exclusive Items are sold shall not exceed five hundred  
49 (500) square feet.]

50           13.2.2 The restrictions set forth in Subsection 13.2.1 above shall not apply to a full-line  
51 national or regional: (i) department store [for example, Wal-Mart, Macy's, or Target], (ii) discount  
52 club [for example, Costco, BJ's Wholesale Club, or Sam's Club], or (iii) home improvement center  
53 [for example, Home Depot or Lowe's], commonly located in first-class shopping centers in the state in  
54 which the Shopping Center is located, each occupying at least 80,000 square feet of Floor Area within  
55 the Shopping Center, as such stores are currently operated (as of the Effective Date). In addition,

1 provided that Landlord enters into a lease with Michael's and/or Ross for space in the Shopping Center  
2 within one (1) year after the Effective Date, then, Tenant shall enter into a so-called "side letter"  
3 agreement with Michael's and/or Ross, as applicable, in the form commonly used by Tenant as of the  
4 Effective Date with respect to Michael's and/or Ross, as applicable, provided that Michael's and/or  
5 Ross, as applicable, agrees to enter into same, in which event the terms and provisions of such side  
6 letter agreement shall modify the applicability of the provisions of Subsection 13.2.1 above to  
7 Michael's and/or Ross, as applicable. Further, attached as Exhibit N hereto is a copy of an executed  
8 "side letter" agreement, between Tenant and Marmaxx Operating Corp., that, as more particularly  
9 provided therein, modifies the applicability of the restrictions set forth in Subsection 13.2.1 above with  
10 respect to Marshalls.

13.2.3 The exclusive rights granted to Tenant in this Section 13.2 shall inure to the  
benefit of any assignee of Tenant's interest in this Lease and to any sublessee of at least fifty percent  
(50%) of the Floor Area of the Premises.

13.2.4 (a) Upon breach of the aforesaid covenant and agreement by Landlord,  
14 contained in this Section 13.2, (which breach shall not include a situation in which the lease between  
15 Landlord and any tenant in the Shopping Center or in the Related Land prohibits the tenant therein  
16 from violating the exclusive rights granted to Tenant in this Section 13.2 and despite such prohibition,  
17 such tenant violates such exclusive rights, unless Landlord fails to comply with any of the provisions  
18 of subparagraph (b) below), the Rent payable hereunder shall be reduced by fifty percent (50%) for so  
19 long as such violation shall continue, and Tenant shall have all remedies given to it at law (other than  
20 consequential or punitive damages) and in equity, including, without limitation, the right to obtain  
21 injunctive relief, and/or to terminate this Lease, and/or to commence and prosecute an action against  
22 Landlord or any other violator for damages (however, Tenant shall not in any such action against  
23 Landlord, seek consequential or punitive damages). Notwithstanding the foregoing, Tenant shall not  
24 terminate this Lease unless Tenant shall have followed the procedures for a default by Landlord set  
25 forth in Section 16.2 hereof; provided, however, in no event shall Landlord's cure period for a default  
26 under this Section 13.2 be longer than thirty (30) days.  
27

### 40 Section 13.3 Exclusives Which Tenant Must Honor.

41                   13.3.1 Tenant shall honor certain exclusives and certain prohibited uses granted by  
42                   Landlord to certain other tenants in the Shopping Center pursuant to the terms of leases which have  
43                   been executed prior to the Effective Date (hereinafter, "*Existing Exclusives*") [a true and complete  
44                   listing and description of such Existing Exclusives being attached hereto as Exhibit K-1], and shall not  
45                   sublease, occupy or use all or any portion of the Premises, or permit all or any portion of the Premises  
46                   to be occupied or used in violation of any such Existing Exclusive (except as may be specifically set  
47                   forth on Exhibit K-1). Landlord represents and warrants that no Existing Exclusive(s) exist other than  
48                   those listed on Exhibit K-1 hereto and that Exhibit K-1 is true accurate and complete, and covenants to  
49                   indemnify, defend and hold Tenant harmless from and against all loss, cost, liability or expense  
50                   (including, without limitation, reasonable legal fees) incurred by Tenant by reason of the enforcement  
51                   by any person or entity of such unlisted Existing Exclusive. Notwithstanding the foregoing, Tenant  
52                   shall be entitled to enter into a separate agreement with any tenant or other occupant for whose benefit  
53                   the existing Exclusive is granted which nullifies or modifies the corresponding Existing Exclusive with  
54                   regard to the Premises.

### 55 13.3.2 Intentionally Omitted.

## ARTICLE 14

## CONDUCT OF BUSINESS OPERATIONS

## ARTICLE 15

## TENANT ASSIGNMENT AND SUBLETTING

## Section 15.1 Assignment and Subletting.

32                   15.1.1 Tenant shall have the right from time to time, without the consent of Landlord,  
33 to assign Tenant's interest in this Lease and/or to sublet, concession or license all or any portion of the  
34 Premises, for any lawful retail use subject to all of the terms and conditions of this Lease.

35                   15.1.2 Except with respect to any transaction covered under Subsection 15.1.3 or  
36 Section 15.3 below, in the event Tenant proposes to assign this Lease or sublet, in a single transaction,  
37 the whole of the Premises, it shall first give notice thereof (the "*Assignment/Subletting Notice*") to  
38 Landlord, which notice shall specify the name and address of the proposed assignee or sublessee and  
39 the proposed use of the Premises to be made by such assignee or sublessee, together with a statement  
40 certified by Tenant of the amount of the then unamortized costs (amortized on a straight-line basis over  
41 the Initial Term) of any alterations performed by Tenant to the Premises. Thereafter, Landlord shall  
42 have the option to terminate this Lease, which option shall be exercisable by:

43 (a) giving notice to Tenant (the "***Termination Notice***") thereof within  
44 fifteen (15) days after receipt of an Assignment/Subletting Notice from Tenant, and

45 (b) paying to Tenant, within thirty (30) days after such notice is given, all of  
46 Tenant's costs and expenses incurred in connection with the preparation of plans and specifications  
47 for, and the then unamortized costs (amortized on a straight-line basis over the Initial Term) of,  
48 Tenant's Work and any alterations performed by Tenant to the Premises.

49 in which event this Lease shall automatically terminate on the ninetieth (90th) day (the “**Termination**  
50 **Date**”) after the date on which Tenant receives Landlord’s Termination Notice, with the same force  
51 and effect as if the Termination Date had been designated as the expiration date of this Lease. Upon  
52 the Termination Date, Landlord and Tenant shall each be released from any and all liabilities thereafter  
53 accruing hereunder, except for those obligations which survive the expiration or other termination of  
54 this Lease pursuant to the express terms of this Lease. All Rent payable by Tenant hereunder shall be  
55 apportioned as of the Termination Date and Tenant shall promptly pay to Landlord any amounts so  
56 determined to be due and owing by Tenant to Landlord, and conversely Landlord shall promptly

1 reimburse Tenant for any amounts prepaid by Tenant for periods subsequent to the Termination Date.  
2 Notwithstanding the foregoing, Tenant shall have the right to avoid Landlord's termination by giving  
3 notice to Landlord (the "**Rescission Notice**"), within ten (10) days after receiving the Termination  
4 Notice, of its rescission of the Assignment/Subletting Notice, whereupon Landlord's Termination  
5 Notice shall be rendered null and void, and Tenant shall not assign this Lease or sublet the whole of the  
6 Premises as proposed in its Assignment/Subletting Notice. If Landlord does not give the Termination  
7 Notice within the aforesaid 15-day period, Landlord shall conclusively be deemed to have waived its  
8 termination rights hereunder with respect to such proposed assignment or subletting transaction, and  
9 Tenant may assign this Lease or sublet the entire Premises in accordance with its  
10 Assignment/Subletting Notice. If Landlord terminates the Lease hereunder, then, for a period of two  
11 (2) years after the Termination Date, Landlord shall not lease, rent or occupy or permit the Premises or  
12 any portion thereof to be occupied as a store which operates primarily as a home furnishings, linens  
13 and/or domestics store; the foregoing shall survive the termination of this Lease.

14  
15 15.1.3 In addition to, and not in limitation of, Tenant's other rights set forth in this  
16 Section 15.1, Tenant shall have the right from time to time, without the consent of Landlord, and  
17 without triggering Landlord's termination rights under Section 15.1.2 above, to assign Tenant's  
18 interest in this Lease and/or to sublet or license all or any portion of the Premises: (a) to an Affiliate of  
19 Tenant; (b) to any entity which purchases all or substantially all of the assets of Tenant or any of its  
20 Affiliates; (c) to any entity which purchases Tenant's interest in the majority of stores owned or  
21 operated by Tenant or its Affiliate(s) in the State of Texas; (d) in conjunction with any merger,  
22 acquisition, consolidation or public offering of stock or other interests involving Tenant or its  
23 Affiliate(s); and/or (e) as may be required by any Legal Requirement.

24 Section 15.2 **Liability of Tenant.** Unless otherwise agreed to in writing by Landlord, no  
25 assignment, subletting, licensing or concessioning by Tenant shall reduce, diminish, or otherwise affect  
26 the liability of Tenant hereunder; provided, however, that in the event of an assignment by the Tenant  
27 originally named herein or its Affiliate (collectively, the "**Original Tenant**") of its interest in this Lease  
28 to a Major Assignee or to a tenant whose obligations under this Lease are guaranteed by a Major  
29 Guarantor, all liability of the Original Tenant under this Lease accruing from and after the effective  
30 date of such assignment, shall terminate. For purposes of this Section 15.2, the term "**Major Assignee**"  
31 or "**Major Guarantor**", as the case may be, shall mean a person or entity which has, as of the effective  
32 date of such assignment, a tangible net worth of at least One Million One Thousand One Hundred  
Dollars.

33 Section 15.3 **Collateral Assignment.** In addition to Tenant's other rights set forth in this  
34 Article 15, a collateral assignment of Tenant's interest in this Lease by Tenant to one or more  
35 "Lenders" (hereinafter defined), as collateral security for an indebtedness or other obligation of Tenant  
36 or its Affiliates shall be permitted and Landlord shall execute all reasonable documentation reasonably  
37 requested by Tenant or any such Lender in connection therewith. In addition, Tenant shall have the  
38 right, without Landlord's consent, to grant to an Affiliate of Tenant a license to operate all of Tenant's  
39 business operations at the Premises, without such Affiliate having assumed any liability for the  
40 performance of Tenant's obligations under this Lease. As used herein, "**Lender**" shall mean a state or  
41 federally regulated bank, savings and loan association, insurance company, pension fund, credit union,  
42 real estate investment trust, or other institutional lender.

43 Section 15.4 **Cure Rights of Original Tenant.**

44 If Tenant assigns Tenant's interest in this Lease, then Landlord, when giving notice to said  
45 assignee or any future assignee in respect of any default, shall also give a copy of such notice to the  
46 Original Tenant, and no notice of default shall be effective until a copy thereof is so given to Original  
47 Tenant. Original Tenant shall have the same period after receipt of such notice to cure such default as  
48 is given to Tenant therefor under this Lease.

49 15.4.1 If this Lease is terminated because of: (a) an Event of Default of such assignee,  
50 or (b) the rejection, disaffirmation, or other termination of this Lease by or on behalf of the assignee  
51 pursuant to any proceeding in bankruptcy under any Legal Requirement of any State or of the United  
52 States, or any other Legal Requirements affecting creditors' rights, then Landlord shall promptly give  
53 to Original Tenant notice thereof, and Original Tenant shall have the right, exercisable by notice given  
54 to Landlord within fifteen (15) days after receipt by Original Tenant of Landlord's notice, to enter into  
55 a new lease of the Premises with Landlord ("**New Lease**"), provided that the Original Tenant shall  
56 have remedied all Events of Default of the assignee hereunder, unless such Events of Default are not  
57 reasonably susceptible of cure by the Original Tenant, in which event the Original Tenant shall not be  
58 obligated to cure such Events of Default as a condition to the exercise of its rights under this

1 Subsection 15.4.2. Upon the Original Tenant's curing of any such Event of Default of the assignee as  
2 aforesaid, Landlord shall assign to the Original Tenant all of Landlord's rights against such assignee  
3 (whether arising as a result of bankruptcy court proceedings or otherwise). The term of said New  
4 Lease shall begin on the date of termination of this Lease and shall continue for the remainder of the  
5 Term (including any Renewal Periods). Such New Lease shall otherwise contain the same terms and  
6 conditions as those set forth herein, except for requirements which are no longer applicable or have  
7 already been performed. It is the intention of the parties hereto that such New Lease shall have the  
8 same priority relative to other rights or interests in or to the Premises as this Lease. The provisions of  
9 this Subsection 15.4.2 shall survive the termination of this Lease and shall continue in full force and  
10 effect thereafter to the same extent as if this Subsection 15.4.2 were a separate and independent  
11 contract between Landlord and the Original Tenant. From the date on which the Original Tenant shall  
12 serve Landlord with the aforesaid notice of the exercise of its right to a New Lease, the Original  
13 Tenant shall have quiet and undisturbed use and enjoyment of the Premises and all appurtenances  
14 thereto, as contemplated in this Lease.

15 Section 15.5 Recognition Agreement. In the event Tenant subleases at least fifty percent  
16 (50%) of the Premises for a term of at least five (5) years, then, notwithstanding any other provisions  
17 of this Lease, Landlord shall, upon Tenant's request, execute and deliver an agreement among  
18 Landlord, Tenant and each such subtenant in the form of Exhibit H hereto, in recordable form.

19 **ARTICLE 16**

20 **DEFAULT AND DISPUTE RESOLUTION**

22 Section 16.1 Tenant Default.

23 16.1.1 If Tenant shall fail to: (i) pay any Rent when due, within ten (10) days after its  
24 receipt of notice thereof from Landlord specifying the amount and details of the unpaid Rent, or  
25 (ii) perform or observe any of the other covenants of this Lease on Tenant's part to be performed or  
26 observed within thirty (30) days after its receipt of notice thereof from Landlord specifying the nature  
27 of such default (or, if such default shall be of a nature that same cannot reasonably be cured within  
28 thirty (30) days and Tenant does not commence to cure such default on or before such thirtieth (30th)  
29 day and thereafter diligently prosecute said cure to completion), such circumstance shall constitute an  
30 **"Event of Default"**. If Tenant fails to pay the Fixed Rent within ten (10) days after Tenant's receipt of  
31 notice from Landlord as aforesaid more than three (3) times in any twelve (12) consecutive month  
32 period, then thereafter, during the twelve (12) consecutive months immediately following said third  
33 default, if Tenant shall default in the payment of Fixed Rent and Tenant shall fail to cure such default  
34 within ten (10) days after notice from Landlord, Tenant shall pay to Landlord, as additional rent  
35 together with the next due payment of Fixed Rent, a late charge ("Late Charge") equal to **1%** **(2%)**. The parties agree that such Late Charge represents a fair and reasonable  
36 estimate of the costs Landlord will incur by reason of the late payment of Fixed Rent by Tenant.

38 16.1.2 Upon an Event of Default, Landlord shall have all remedies given to it at law or  
39 in equity (except that Landlord hereby expressly waives any rights to accelerate any element of the  
40 Rent other than as expressly permitted under Subsection 16.1.2(c) hereof, and any right of distraint,  
41 which may be granted to it by law), including the following:

42 (a) to bring suit for the collection of such unpaid Rent or for the  
43 performance of such other covenant of this Lease on Tenant's part to be performed; and/or

44 (b) without waiving any non-monetary default, may (but shall not be  
45 obligated to) perform any covenant which is capable of being remedied by the performance of  
46 affirmative acts for the account and at the reasonable expense of Tenant (it being agreed that should  
47 Landlord require access to the Premises in order to perform such covenant as aforesaid, Landlord shall  
48 comply with the applicable provisions of Sections 9.2 hereof), in which event, Tenant shall pay to  
49 Landlord on demand, as Additional Rent, the reasonable cost or amount thereof, together with interest  
50 thereon at the Lease Interest Rate from the date of outlay of expense until payment; and/or

51 (c) upon at least five (5) days' notice to Tenant, to terminate this Lease,  
52 whereupon Landlord shall have and retain full right to sue for and collect all unpaid Rent which shall  
53 have accrued up to the date of termination and any damages to Landlord by reason of any such breach,  
54 and Tenant shall surrender and deliver the Premises to Landlord, failing which, Landlord shall have the  
55 right to initiate summary proceedings to recover possession; and/or

If Landlord shall elect to terminate this Lease as provided in this Section 16.1.2(c) above, then Landlord shall be entitled to recover from Tenant, in addition to amounts then due and unpaid, as and for liquidated damages (and not as a penalty), an amount equal to the amount (if any) by which (i) the Rent reserved hereunder for the period which otherwise would have constituted the balance of the Term (exclusive of unexercised Renewal Options) from the latest of the date of termination of this Lease, the date of reentry or the date through which monthly deficiencies shall have been paid in full (conclusively presuming the Additional Rent component of Rent to be the same as payable for the year immediately preceding such termination or reentry or the date through which monthly deficiencies shall have been paid in full), exceeds (ii) the fair market rental value of the Premises at the time of such election for such period (conclusively presuming the Additional Rent component of Rent to be the same as payable for the year immediately preceding such termination or reentry or the date through which monthly deficiencies shall have been paid in full), both discounted to present value at the rate of ten percent (10%) per annum; and/or

16.1.3 Upon an Event of Default, Tenant shall be liable for and shall pay to Landlord, in addition to any sum provided to be paid above, brokers' fees incurred by Landlord in connection with reletting the whole or any part of the Premises for the remainder of the then unexpired Term (excluding any then unexercised Renewal Periods), the costs of removing and storing Tenant's or other occupant's property; the cost of repairs; and all other commercially reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies, including reasonable attorneys' fees.

35                   16.1.5. Landlord shall use all reasonable efforts to relet the Premises or any portion  
36 thereof to mitigate Landlord's damages to which Landlord would otherwise be entitled to as a result of  
37 an Event of Default. In no event shall Tenant be liable to Landlord for any consequential or punitive  
38 damages suffered by Landlord as a result of an Event of Default by, or any other act of, Tenant,  
39 Tenant's agents or employees, or Tenant's contractors.

40       Section 16.2 Landlord Default. If Landlord shall: (i) fail to perform or observe any of the  
41 covenants of this Lease on Landlord's part to be performed or observed within thirty (30) days after  
42 receiving notice from Tenant thereof (or, if same cannot reasonably be cured within thirty (30) days, if  
43 Landlord shall fail to promptly commence and diligently prosecute said cure to completion), or  
44 (ii) materially breach any warranty or representation under this Lease (either of (i) or (ii) above being  
45 hereinafter referred to as a "Landlord's Default"), then Tenant, in addition to such other rights and  
46 remedies as may be available under this Lease, or at law or in equity, may, in its sole discretion:

47 (a) as applicable, perform such obligation(s) of Landlord in accordance with  
48 the provisions of this Lease on behalf of, and at the expense of Landlord; and/or

49 (b) bring suit for the collection of any amounts for which Landlord is in  
50 default, seek injunctive relief, or seek specific performance for any other covenant or agreement of  
51 Landlord, without terminating this Lease; and/or

52 (c) offset against the Rent payable by Tenant hereunder for amounts owed  
53 by Landlord to Tenant and/or for the amounts reasonably expended by Tenant performing Landlord's  
54 obligations hereunder, including costs and reasonable attorneys' fees, together with interest thereon at  
55 the Lease Interest Rate from the date of the outlay (provided that Tenant gave Landlord notice of such

1 amount within 30 days following the outlay; otherwise, from the date upon which Tenant demands  
2 such amount from Landlord) until paid; and/or

3 (d) terminate this Lease, without waiving its rights to damages for  
4 Landlord's Default, provided that: (1) Landlord's Default materially interferes with the normal  
5 conduct of any business operations in the Premises, (2) Landlord's Default is not reasonably capable of  
6 being cured by Tenant, and (3) Tenant gives notice of Landlord's Default to any Mortgagee of whom  
7 Landlord shall have previously given Tenant notice (including its address), and such Mortgagee shall  
8 not have cured Landlord's Default within thirty (30) days after such notice is given (or, if such default  
9 cannot reasonably be cured within thirty (30) days, such Mortgagee fails to promptly commence and  
10 diligently prosecute said cure to completion).

11 Notwithstanding the foregoing, if, in Tenant's reasonable judgment, a condition posing  
12 imminent risk of liability or material harm to persons or property or material disruption to the normal  
13 conduct of any business operations in the Premises shall exist, Tenant may, at its election, and without  
14 prior notice to Landlord, exercise any or all of the remedies set forth in (a), (b) and (c) above. In no  
15 event shall Landlord be liable to Tenant for any consequential or punitive damages suffered by Tenant  
16 as a result of a default by, or any other act of, Landlord, Landlord's agents or employees, or Landlord's  
17 contractors.

18 Section 16.3 Arbitration. In any case where this Lease expressly provides for submission of a  
19 dispute or matter to arbitration (but not otherwise), the same shall be settled by arbitration in Austin,  
20 Texas, before one arbitrator in accordance with the procedural rules then obtaining of the American  
21 Arbitration Association or any successor thereto. The decision of the arbitrator shall be final,  
22 conclusive and binding on the parties, but the powers of the arbitrator are hereby expressly limited to  
23 the determination of factual issues, and the arbitrator shall have no power to reform, supplement or  
24 modify this Lease. The arbitrator shall make only required findings of fact incident to an arbitrable  
25 dispute, which findings shall be set forth in reasonable detail in a written decision by the arbitrator.  
26 Landlord and Tenant shall share equally in the cost and expenses of such arbitration, and each shall  
27 separately pay its own attorneys' fees and expenses, unless the arbitrator finds that one of the parties  
28 did not act in good faith in connection with the dispute or the conduct of the arbitration proceeding, in  
29 which case the arbitrator may award all or part of said costs, expenses and fees to the other party.

30 **ARTICLE 17**

31  
32 **RIGHT TO MORTGAGE AND NON**  
33 **DISTURBANCE, ESTOPPEL CERTIFICATE**

34 Section 17.1 Right to Mortgage and Non-Disturbance. Landlord reserves the right to subject  
35 and subordinate this Lease at all times to the lien of any first mortgage or deed of trust for the benefit  
36 of any Mortgagee hereafter encumbering or affecting all or any portion of the Shopping Center, as well  
37 as to any future ground or underlying leases encumbering or affecting all or any part of the Shopping  
38 Center; provided, however, that (a) each Mortgagee shall first execute and deliver to Tenant a  
39 subordination, non-disturbance and attornment agreement in substantially the form attached as  
40 Exhibit G hereto, in recordable form, and (b) any Ground Lessor shall execute (and shall obtain the  
41 written consent of any holder of any mortgage, deed of trust or any other existing lien encumbering or  
42 affecting the Shopping Center or any portion thereof, as applicable) and deliver to Tenant a fee owner  
43 recognition agreement in a form reasonably satisfactory to Tenant, which shall include the following  
44 provisions: (i) the Ground Lessor will not, in the exercise of any of the rights arising or which may  
45 arise out of such lease, disturb or deprive Tenant in or of its possession or its rights to possession of  
46 the Premises or of any right or privilege granted to or inuring to the benefit of Tenant under this Lease  
47 as long as Tenant is not then in default under the Lease after Tenant's receipt of notice of such default  
48 and the expiration of all applicable cure periods; (ii) in the event of the termination of the ground or  
49 underlying lease, Tenant will not be made a party in any removal or eviction action or proceeding, nor  
50 shall Tenant be evicted or removed of its possession or its right of possession of the Premises (except  
51 to the extent that such joinder is necessary and required by Legal Requirements to enforce the  
52 mortgagee's rights under the mortgage, and then only for such purpose and not for the purpose of  
53 terminating the Lease), and this Lease shall continue in full force and effect as a direct lease between  
54 the Ground Lessor and Tenant for the remainder of the Term and on the same terms and conditions as  
55 contained herein, without the necessity of executing a new lease; and (iii) Landlord and Tenant shall  
56 have the right to execute any amendment to this Lease which is specifically required hereunder and the  
57 Ground Lessor shall recognize and be bound thereto.

1       Section 17.2 Estoppel Certificate. Upon written request of Landlord or Tenant, the other  
2 party, within thirty (30) days after the date of receipt of such request, shall execute and deliver to and  
3 only for the benefit of the requesting party or any Mortgagee, *bona fide* prospective purchaser,  
4 assignee, or sublessee of the requesting party, without charge, a written statement: (1) ratifying this  
5 Lease; (2) certifying, to such party's actual knowledge, that this Lease is in full force and effect, if  
6 such is the case, and has not been modified, assigned, supplemented or amended, except by such  
7 writings as shall be stated; (3) specifying the dates to which Fixed Rent and Additional Rent have been  
8 paid; (4) stating whether or not, to such party's actual knowledge, the party requesting the estoppel is  
9 in default and, if so, stating the nature of such default, (5) stating the Rent Commencement Date, and  
10 (6) stating which options to extend the Lease Term have been exercised, if any. Each request for a  
11 written statement pursuant to this Section 17.2 made within twelve (12) months of two (2) earlier  
12 requests for such a written statement shall be accompanied by a payment, from the requesting party to  
13 the other party, in the amount of One Thousand Dollars (\$1000) (increased by Two Hundred Dollars  
14 (\$200) on each date that the Fixed Rent increases pursuant to Section 1.1.11 hereof).

15                   Section 17.3 Existing Mortgages. If a mortgage, deed of trust, or other security instrument,  
16 or any ground or underlying lease, encumbers the Shopping Center or any part thereof on the Effective  
17 Date, then within thirty (30) days after the Effective Date, Landlord shall deliver to Tenant, in  
18 recordable form: (x) a subordination, non-disturbance and attornment agreement substantially in the  
19 form attached hereto as Exhibit G, in recordable form, executed by each and every holder of any  
20 mortgage, deed of trust or any other existing lien encumbering or affecting the Shopping Center or any  
21 portion thereof, and (y) a fee owner recognition agreement in the form and content described in clause  
22 (b) of Section 17.1 hereof, in recordable form, executed by any Ground Lessor (and, as may be  
23 required, consented to by the holder of any mortgage, deed of trust or other existing lien as aforesaid).  
24 Should Landlord fail to so deliver such instrument(s) within said 30-day period, Tenant shall have the  
25 right by notice given to Landlord at any time prior to the date on which such instrument(s) are  
26 delivered, to terminate this Lease, in which event, neither party shall have any further liability  
27 hereunder, except: (i) for those obligations which survive the expiration or other termination of this  
28 Lease pursuant to the express terms of this Lease, and (ii) Landlord shall be obligated to promptly  
29 reimburse Tenant for all its reasonable, third-party costs and expenses incurred in connection with this  
30 Lease, including, without limitation, the preparation and review of plans and specifications, and the  
31 performance of Tenant's Work, provided, however, that such reimbursement by Landlord shall not  
32 exceed the aggregate sum of Fifty Thousand Dollars (\$50,000).

## ARTICLE 18

## NOTICE

36        Subject to the further provisions of this Article 18, whenever it is provided herein that any  
37 notice, demand, request, consent, approval or other communication ("Notice") shall or may be given to  
38 either of the parties by the other, it shall be in writing and, any Legal Requirement to the contrary  
39 notwithstanding, shall not be effective for any purpose unless same shall be given by registered or  
40 certified mail, postage prepaid, return receipt requested, or by any recognized overnight mail carrier,  
41 with proof of delivery slip, addressed to Landlord at Landlord's Mailing Address, with copies of  
42 notices to Landlord also given to Jenkens & Gilchrist, a Professional Corporation, 1445 Ross Avenue,  
43 Suite 3200, Dallas, Texas 75202, Attn: William L. Sladek, Esq., or to Tenant at Tenant's Mailing  
44 Address, with copies of notices to Tenant also given to: (i) Allan N. Rauch, Esq., c/o Bed Bath &  
45 Beyond Inc., 650 Liberty Avenue, Union, New Jersey 07083, and (ii) Sills Cummis Epstein & Gross  
46 P.C., One Riverfront Plaza, Newark, New Jersey 07102, Attention: Jeffrey H. Newman, Esq., or to  
47 such other person or other address as may, from time to time, be specified by either party in a written  
48 notice to the other party, in accordance with the provisions of this Article 18. All notices given in  
49 accordance with the provisions of this Section shall be effective upon receipt (or refusal of receipt) at  
50 the address of the addressee. Notwithstanding the foregoing, Landlord shall instead send the following  
51 items to Tenant (Attention: Lease Administration) at Tenant's Mailing Address: (A) all bills, notices  
52 (but not notices of default) and related information pertaining to Tenant's Pro Rata Share of Taxes as  
53 described in Section 4.3 of this Lease, and (B) all budgetary information, notices (but not notices of  
54 default), statements, bills and related information pertaining to Tenant's Pro Rata Share of Common  
55 Areas Charges as described in Section 5.1 of this Lease.

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## ARTICLE 19

### TENANT'S PROPERTY

4 All of Tenant's Property which may be installed or placed in or upon the Premises by Tenant  
5 shall remain the property of Tenant. Tenant may assign, hypothecate, encumber, mortgage or create a  
6 security interest in or upon Tenant's Property in the Premises without the consent of Landlord and may  
7 remove Tenant's Property at any time during the Term. Landlord waives any right it may have in  
8 Tenant's Property. To the extent Landlord may have a lien on or security interest in the Tenant's  
9 Property pursuant to this Lease, by law or otherwise (but excluding herefrom any judgment liens  
10 obtained by Landlord from a court of competent jurisdiction pertaining to an Event of Default),  
11 Landlord hereby waives, and agrees not to assert, such lien or security interest. Landlord shall provide  
12 to Tenant, within ten (10) days after Tenant's request therefor, a written waiver in form reasonably  
13 satisfactory to both Tenant and Landlord reasonably evidencing Landlord's waiver of any rights it has  
14 or may have in Tenant's Property.

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## ARTICLE 20

### END OF TERM

18 Section 20.1 Surrender of Premises. At the expiration of the Term, Tenant will quit and  
19 surrender the Premises in good condition and repair, excepting, however, reasonable wear and tear,  
20 damage by fire or other casualty, damage by eminent domain, and repairs and replacements to be made  
21 by Landlord hereunder.

22 Section 20.2 Hold Over. If Tenant fails to deliver possession of the Premises to Landlord at  
23 the end of the Term, and unless Landlord and Tenant are, at such time, engaged in good faith  
24 negotiations to extend the Term, Tenant shall be a tenant at sufferance and shall be liable for Fixed  
25 Rent on a monthly basis (or, if applicable, on a prorated daily basis) in an amount equal to one hundred  
26 fifty (150%) percent of the amount thereof payable by Tenant for the month immediately preceding the  
27 last day of the Term as well as for all Additional Rent payable by Tenant hereunder.

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## ARTICLE 21

### TENANT'S RIGHT OF FIRST OFFER

31 Provided an uncured Event of Default does not then exist under this Lease, Tenant shall have  
32 continuing rights of first offer to lease additional space in the Shopping Center which is contiguous to  
33 the Premises and which may become available on and after the date of this Lease but subsequent to the  
34 initial "lease-up" of the Shopping Center. At such time that Landlord has knowledge that such space  
35 ("*Offered Space*") is or will become available, Landlord will give Tenant notice (the "*Offering  
36 Notice*") of the terms and conditions Landlord would be willing to accept with respect to the Offered  
37 Space (including, without limitation, the proposed rent, additional rent, scope of Landlord's proposed  
38 tenant improvements, location and Floor Area), and Tenant shall have thirty (30) days within which to  
39 respond to Landlord's offer. In the event Tenant elects to accept Landlord's offer, then Tenant shall  
40 notify Landlord of such election by giving notice to Landlord during such thirty (30) day period and  
41 Landlord and Tenant shall thereupon enter into an amendment to this Lease for the leasing of the  
42 Offered Space, which amendment shall (a) contain the terms and conditions set forth in the Offering  
43 Notice, (b) provide that the term thereunder shall expire or sooner terminate contemporaneously with  
44 the expiration or sooner termination of the Term hereof (subject to extension in accordance with  
45 Section 2.2.2 above), provided however that if there are fewer than seven (7) years remaining on the  
46 then current Term, the then current Term shall be extended pursuant to such amendment to, and the  
47 Expiration Date shall be deemed to be, midnight on the last day of January following the seventh (7<sup>th</sup>)  
48 anniversary of the date of the Offering Notice (which extension of the then current Term may be  
49 accomplished, if less than seven (7) years remain on the then current Term, by Tenant's exercise of  
50 any unexercised Renewal Option only for such portion of the applicable Renewal Period that shall end  
51 on such seventh (7<sup>th</sup>) anniversary; with Tenant hereby reserving the right to exercise any Renewal  
52 Option for the remainder of the applicable Renewal Period, provided Tenant shall give Landlord notice  
53 of same at least one hundred eighty (180) days prior to such seventh (7<sup>th</sup>) anniversary), and (c) contain  
54 such other terms and provisions as either Landlord or Tenant may reasonably require in order to  
55 effectuate the incorporation of the Offered Space into the Premises and to otherwise effectuate the  
56 intent of this Article 21. Should Tenant decline Landlord's offer or fail to respond thereto, then, and in  
57 such event, Tenant shall have been deemed to have waived any prospective rights of first offer to the

Offered Space (but Tenant shall not lose any prospective rights of first offer with respect to any space (including, without limitation, the Offered Space) which may in the future become vacant and available), and Landlord may lease the Offered Space to any other party upon substantially the same terms and conditions as that offered to Tenant, provided that such lease is executed within six (6) months after Tenant has declined (or has been deemed to have waived) Landlord's offer with respect to the Offered Space. As used herein, the phrase "*substantially the same terms and conditions as that offered to Tenant*" shall mean terms not materially different and/or a rent of not more than five (5%) percent below the rent requested by Landlord of Tenant. Any dispute between the parties with respect to this Article 21 (including, without limitation, any dispute as to the provisions of the amendment described in this Article 21) shall be resolved by arbitration in accordance with the provisions of Section 16.3 above.

## ARTICLE 22

#### ONGOING CO-TENANCY

15 As used herein, the term "*Excess Vacancy*" shall mean:

16 (1) if the Stage-2 Co-Tenancy Condition has not been satisfied, that the Inducement Tenant  
17 (or an Inducement Replacement Tenant as defined below) has ceased to operate for business to the  
18 public (for reasons other than casualty, retro-fitting of a store or a store concept change provided such  
19 tenant is proceeding with due diligence to re-open its store);

In the event of an Excess Vacancy, Tenant shall have the right to: (i) pay Alternate Rent in lieu of Fixed Rent during the period of such Excess Vacancy, and/or (ii) if the Excess Vacancy continues for a period in excess of three hundred sixty-five (365) continuous days, to terminate this Lease, exercisable by giving Landlord, within one hundred twenty (120) days after the expiration of such 365-day period, at least sixty (60) days' prior notice, in which event this Lease shall terminate on the date set forth in Tenant's notice of termination without further liability on the part of either Landlord or Tenant, except: (A) for those obligations which survive the expiration or other termination of this Lease pursuant to the express terms of this Lease, and (B) Landlord, promptly after receiving a statement from Tenant showing the costs and expenses of any alterations made by Tenant, shall reimburse Tenant for the unamortized portion of such costs and expenses based upon the unexpired portion of the Term. If Tenant does not terminate this Lease pursuant to this Article 22, then commencing on the expiration of the aforesaid 120-day period, Tenant shall resume paying full Rent, provided, however, that Tenant shall retain all of its original rights under this Article 22 with respect to any future condition(s) of Excess Vacancy. For purposes of this Article 22, an "**Inducement Replacement Tenant**" shall mean a tenant that (a) occupies at least ninety-five percent (95%) of the Floor Area in the Inducement Tenant's or the applicable Additional Inducement Tenant's premises, as shown on Exhibit B and (b) such tenant(s) is a "National Tenant" (as defined below) or "Regional Tenant" (as defined below) which offers goods and services that are compatible with the then current uses of the Shopping Center and Tenant, and attracts a similar customer to the Shopping Center as was attracted by the Inducement Tenant or Additional Inducement Tenant that is being replaced. As used in this Lease, the term "**National Tenant**" shall mean a tenant operating, as of the applicable date, at least seventy-five (75) retail stores in the continental United States under a single trade name in first-class shopping centers. As used in this Lease, a "**Regional Tenant**" shall mean a tenant operating, as of the applicable date, at least thirty-five (35) retail stores in first-class shopping centers in any of the following states under a single trade name: Texas, Oklahoma, Louisiana and Arkansas.

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## ARTICLE 23

### MISCELLANEOUS

4       Section 23.1 Loading Facilities. Tenant shall have the exclusive right to utilize the loading  
5       facilities serving the Premises (shown on Exhibit B) on a "24 hour a day", "365 days a year" basis.

6       Section 23.2 Liens. Within thirty (30) days after notice of the filing thereof, Tenant shall  
7       discharge (either by payment or by filing of the necessary bond, or otherwise) any lien against the  
8       Premises and/or Landlord's interest therein, which may arise out of any payment due for, or purported  
9       to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or  
10      for Tenant in, upon or about the Premises. Similarly, if Landlord has furnished Tenant with a  
11      nondisturbance agreement from Landlord's construction lender as mandated by this Lease, then except  
12      for the lien securing the construction loan and with which construction lender Tenant has an executed  
13      nondisturbance agreement as set forth herein, within thirty (30) days after notice of the filing thereof,  
14      Landlord shall discharge (either by payment or by filing of the necessary bond, or otherwise) any other  
15      lien against the Premises and/or Landlord's interest therein, which may arise out of any payment due  
16      for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have  
17      been furnished to or for Landlord in, upon or about the Premises.

18      Section 23.3 Broker's Commission. Landlord and Tenant each warrant and represent to the  
19      other that they did not deal with any real estate broker in connection with the negotiation, execution  
20      and delivery of this Lease, except for The Retail Connection (the "*Broker*"). Landlord shall pay the  
21      Broker a commission pursuant to a separate agreement. Each party agrees to indemnify, defend, and  
22      save the other harmless from and against any and all liabilities, costs, causes of action, damages and  
23      expenses, including, without limitation, attorneys' fees, with respect to or arising out of any claims  
24      made by any real estate broker (other than the Broker), agent or finder with respect to this Lease in  
25      breach of the foregoing representation. The provisions of this Section shall survive the expiration or  
26      earlier termination of this Lease.

27      Section 23.4 Force Majeure. Except as otherwise expressly set forth herein, in the event  
28      either party hereto shall be delayed or hindered in, or prevented from, the performance of any act  
29      required hereunder by reason of strikes, failure of power, a moratorium on construction imposed by  
30      Legal Requirements provided that the application of same is not as a result of the acts or omissions of  
31      Landlord or Landlord's employees, agents, or contractors, riots, insurrection, war, earthquake,  
32      hurricane or tornado (or comparable weather conditions of unusual severity), or other reasons of an  
33      extraordinary nature which are beyond the reasonable control of the party, and which could not have  
34      been avoided through the exercise of due diligence by a party (collectively referred to herein as "*Force*  
35      *Majeure*"), then the performance of any such act shall be excused for a period equal to the period of  
36      the delay. Notwithstanding the foregoing provisions, the following shall not constitute Force Majeure:  
37      (i) the financial inability of a party to perform its obligations under this Lease; or (ii) delays occurring  
38      in the course of complying with applicable Legal Requirements that could have been avoided through  
39      the exercise of due diligence by a party hereto. A party wishing to invoke this Section shall give the  
40      other party notice of that intention within ten (10) days of the commencement of any event of Force  
41      Majeure and shall, at that time, specify the reasons therefor, the specific provision of this Lease which  
42      will be delayed as a result, and the period of such extension, if known, or if not known, a reasonable  
43      estimate thereof.

44      Section 23.5 Consents. Except as may be otherwise expressly set forth in this Lease,  
45      whenever under this Lease provision is made for either party's securing the consent or approval of the  
46      other party, (i) such consent or approval shall be in writing and shall not be unreasonably withheld,  
47      delayed or conditioned, and (ii) in all matters contained herein, both parties shall have an implied  
48      obligation of reasonableness.

49      Section 23.6 Costs. Whenever this Lease requires the performance of an act by a party, such  
50      party shall perform the act at its own cost and expense, unless expressly provided to the contrary.

51      Section 23.7 Attorneys' Fees. In any action or proceeding hereunder (whether to enforce the  
52      terms and provisions of an indemnity or otherwise), the prevailing party shall be entitled to recover  
53      from the other party the prevailing party's reasonable costs and expenses in such action or proceeding,  
54      including reasonable attorneys' fees, costs and expenses. Except as otherwise set forth herein, if either  
55      party is sued by a third party as a result of a violation of a covenant or warranty herein contained by  
56      the other party hereto, then the party who has violated the covenant or warranty shall be responsible for

1 the reasonable costs and expenses in such action or proceeding against the non-violating party,  
2 including reasonable attorneys' fees, costs and expenses.

3       Section 23.8 Survival of Obligations. The obligation to pay any sums due to either party  
4 from the other that by the terms herein would not be payable, or are incapable of calculation, until after  
5 the expiration or sooner termination of this Lease shall survive and remain a continuing obligation  
6 until paid. All indemnity obligations under this Lease shall survive the expiration or earlier  
7 termination of this Lease.

8       Section 23.9 Non-Waiver. The failure of Landlord or Tenant to insist upon the strict  
9 performance of, or to enforce, any provision, covenant or condition herein shall not be deemed to be a  
10 waiver thereof, nor void or affect the right of the aggrieved party to enforce the same covenant or  
11 condition on the occasion of any subsequent breach or default; nor shall the failure of either party to  
12 exercise any option in this Lease upon any occasion arising therefor be deemed or construed to be a  
13 waiver of the right to exercise that same kind of option upon any subsequent occasion.

14       Section 23.10 Rights Cumulative. Unless expressly provided to the contrary in this Lease,  
15 each and every one of the rights, remedies and benefits provided by this Lease shall be cumulative and  
16 shall not be exclusive of any other such rights, remedies and benefits allowed by applicable Legal  
17 Requirements.

18       Section 23.11 Definition of Landlord. The term "**Landlord**" shall mean only the person or  
19 entity which, from time to time, shall then own the Shopping Center, and in the event of the transfer by  
20 such owner of its interest in the Shopping Center, such owner shall (except to the extent of (1) claims  
21 made by Tenant against Landlord which arose prior to the effective date of the transfer of such  
22 ownership interest, and/or (2) judgments obtained by Tenant against Landlord, on or prior to the  
23 effective date of the transfer of such ownership interest) thereupon be released and discharged from all  
24 covenants and obligations of Landlord thereafter accruing, but such covenants and obligations shall be  
25 binding during the Term upon each new owner for the duration of such owner's ownership.

26       Section 23.12 Successors and Assigns. The provisions of this Lease shall be binding upon and  
27 shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators,  
28 successors and assigns.

29       Section 23.13 Limitation of Landlord's Liability. Except with respect to insurance proceeds or  
30 condemnation awards received by Landlord which are required by the terms of this Lease to be applied  
31 to the repair or restoration of the Premises or the Shopping Center, Tenant shall, on and after the  
32 Delivery Date, look only to Landlord's estate and property in the Shopping Center subsequent to the  
33 date upon which Tenant has given Landlord written notice of a default under this Lease (or the  
34 proceeds from the sale of all or any portion thereof) and net income derived from the Shopping Center  
35 for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process)  
36 requiring the payment of money by Landlord hereunder and no other property or assets of Landlord, its  
37 officers, directors, stockholders, members or partners shall be subject to levy, execution or other  
38 enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease.  
39 Except with respect to the limitation on personal liability hereinabove set forth, the provisions of this  
40 Section 23.13 shall not be deemed or construed to limit Tenant's rights and remedies pursuant to this  
41 Lease or which may be available at law or in equity.

42       Section 23.14 Limitation of Tenant's Liability.

43       Landlord, its successors and assigns, shall look solely to the assets, if any, of Tenant and its  
44 successors and assigns, for the satisfaction of any claim arising from or under this Lease and shall not  
45 seek to impose personal liability on any shareholder, officer, director, member or employee of Tenant  
46 or any of its Affiliates.

47       Section 23.15 Joint and Several Liability. If either party consists of more than one person,  
48 then the persons constituting such party shall be jointly and severally liable hereunder.

49       Section 23.16 Severability. If any term, covenant, condition or provision of this Lease is held  
50 by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the  
51 provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or  
52 invalidated thereby.

1       Section 23.17 Grammatical Usages and Construction. In construing this Lease, feminine or  
2       neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall  
3       be substituted for singular and singular for plural in any place in which the context so requires. This  
4       Lease shall be construed without regard to: (i) the identity of the party who drafted the various  
5       provisions hereof, and (ii) the addition or deletion of text made during the negotiation of this Lease.  
6       Moreover, each and every provision of this Lease shall be construed as though all parties hereto  
7       participated equally in the drafting thereof. As a result of the foregoing, any rule or construction that a  
8       document is to be construed against the drafting party shall not be applicable hereto.

9                   Section 23.18 Table of Contents, Line Numbering and Paragraph Headings. The table of  
10 contents and line numbering, if any, and section headings are inserted only for convenience and in no  
11 way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

12       Section 23.19 Definition of Hereunder, Herein, etc. Unless the context clearly indicates to the  
13 contrary, the words "herein," "hereof," "hereunder," "hereafter," and words of similar import refer to  
14 this Lease and all the Exhibits attached hereto as a whole and not to any particular section, subsection,  
15 or paragraph hereof.

16       Section 23.20 Short Form Lease. Upon the request of either party following the execution and  
17 delivery of this Lease, Landlord and Tenant shall execute a short form lease or memorandum for  
18 recording, which shall be in form and substance as either party shall reasonably request. If, at any time  
19 following the Delivery Date, Landlord or its Affiliate shall hold title to or have control over, by deed,  
20 ground lease or otherwise, the Sam's Parcel (or any portion thereof), then Landlord shall record a  
21 memorandum or short form of this Lease against the Sam's Parcel (or such applicable portion thereof)  
22 in form and substance as either party shall reasonably request. In no event shall the amount of Fixed  
23 Rent reserved hereunder be included in any such short form lease or memorandum.

24       Section 23.21 Entire Agreement and Modification. This Lease constitutes the entire agreement  
25 of the parties hereto, and all prior agreements between the parties, whether written or oral, are merged  
26 herein and, except as may be specifically set forth herein, shall be of no force and effect. This Lease  
27 cannot be changed, modified or discharged orally, but only by an agreement in writing, signed by the  
28 party against whom enforcement of the change, modification or discharge is sought.

29       Section 23.22 No Joint Venture or Partnership Created by Lease. Nothing contained herein  
30 shall be deemed or construed as creating the relationship of principal and agent or of partnership or of  
31 joint venture between the parties hereto.

32       Section 23.23 Tenant's Tradename. Landlord shall not make use of Tenant's tradename [i.e.,  
33       "Bed Bath & Beyond"®] in any advertising or marketing material, including, without limitation, on  
34       any internet website, without obtaining Tenant's prior written approval, which may be withheld in  
35       Tenant's sole and absolute discretion.

36       Section 23.24 Counterparts. This instrument may be executed in several counterparts, each of  
37 which shall be deemed an original. The signatures to this instrument may be executed and notarized  
38 on separate pages, and when attached to this instrument, shall constitute one complete document.

39                   Section 23.25 Waiver of Trial by Jury. Landlord and Tenant hereby mutually waive any and  
40 all rights which either may have to request a jury trial in any proceeding between them at law or in  
41 equity.

42 [Signature page follows]

1       Section 23.26 Governing Law. This Lease shall be governed by, construed, and enforced in  
2 accordance with the laws of the State in which the Premises are located.

3       IN WITNESS WHEREOF, the parties have executed this instrument under seal the day and  
4 year first-above written.

5

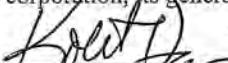
LANDLORD:

WITNESS:

[SEAL]

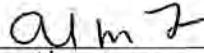
LINCOLN PO RED OAK VILLAGE, L.P.,  
a Delaware limited partnership

By: LINCOLN GP RED OAK VILLAGE, INC., a  
Texas corporation, its general partner

By:   
Name: Robert T. Bozler  
Title: Executive Vice President

TENANT:

ATTEST:

  
Name: Alan M. Freeman  
Title: (Assistant) Secretary

[SEAL]

BED BATH & BEYOND INC.,  
a New York corporation

  
Name: Warren Eisenberg  
Title: Co-Chairman

6

1  
2

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1

Exhibit A

2

Legal Description of Shopping Center

3 **TRACT 1:** Lot 5, Section 1 (McKinley Place) and Lot 6, Section 1 (McKinley Place), each a  
4 subdivision in Hays County, Texas, according to the map or plat thereof, recorded in Volume 9, Page  
5 186 of the Plat Records of Hays County, Texas. (Lot 5, Section 1 containing approximately 1.150  
6 acres of land and Lot 6, Section 1 containing approximately 1.140 acres of land per recorded plat —  
7 total acreage 2.290 acres); and

8

9 **TRACT 2:** Lot 7, Section 1 (McKinley Place), a subdivision in Hays County, Texas, according to the  
10 map or plat thereof, recorded in Volume 10, Page 79 of the Plat Records of Hays County, Texas.  
11 (Containing approximately 1.661 acres of land per recorded plat); and

12

13 **TRACT 3:** A 17.037 acre tract of land, more or less, out of the J.M. Veramendi Survey No. 1 in Hays  
14 County, Texas and being more particularly described by metes and bounds below.

15

16 **BEING** a 17.037 acre tract or parcel of land out of and being a part of the J.M. Veramendi  
17 Survey No. 1 in the City of San Marcos, Hays County, Texas, and being a part of that certain 116.94  
18 acre tract described in a deed from H.L. Schulle, Trustee, to Mary Anne Hood, Trustee, recorded in  
19 Volume 263, Page 522, Hays County Deed Records. Herein described tract or parcel of land being  
20 more particularly described by metes and bounds as follows:

21 **BEGINNING** at a  $\frac{1}{2}$  inch iron rod with survey cap found in the southwest line of the said  
22 116.94 acre tract at the south corner of Lot No. 4, Section 1, McKinley Place, a subdivision in said  
23 county as recorded in Volume 9, Page 186, Hays County Plat Records, for the west corner of this tract.  
24 Said point being in the northeast line of Lot A, Municipal Airport Subdivision, as recorded in Volume  
25 163, Page 161, Hays County Deed Records.

26 **THENCE** with the southeast line of Lots No. 4, 5 and 6 of Section 1, McKinley Place  
27 Subdivision, N 44 deg. 51 min. 07 sec. E, 185.22 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found; N 44  
28 deg. 47 min. 37 sec. E, 200.42 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found; N 44 deg. 48 min. 05  
29 sec. E, 199.02 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found in the southwest line of McKinley Place  
30 Drive, a 60 foot roadway as shown on plat of said subdivision, the east corner of Lot No. 6, for the  
31 north corner of this tract.

32 **THENCE** with the southwest line of McKinley Place Drive, along a curve to the left whose  
33 radius is 330.00 feet; whose long chord bears S 52 deg. 11 min. 43 sec E, 82.77 feet; 82.99 feet along  
34 the arc to a  $\frac{5}{8}$  inch iron rod set at the end of said curve.

35 **THENCE** continuing with the southwest line of McKinley Place Drive, S 59 deg. 32 min. 34  
36 sec. E, 100.00 feet to a  $\frac{5}{8}$  inch iron rod set at the beginning of a curve to the right.

37 **THENCE** with said curve to the right whose radius is 270.00 feet; whose long chord bears S  
38 52 deg. 07 min. 59 sec. E, 69.90 feet; 70.10 feet to a  $\frac{5}{8}$  inch iron rod set at the end of said curve and  
39 termination of said curve, for an interior corner of this tract.

40 **THENCE** with the terminus of McKinley Place Drive, N 45 deg. 15 min. 44 sec. E, 60.00 feet  
41 to a  $\frac{1}{2}$  inch iron rod with survey cap found in the southwest line of Lot No. 1, Section 1, McKinley  
42 Place, as recorded in Volume 7, Page 156, Hays County Plat Records, the east corner of said McKinley  
43 Place Drive, for an angle corner of this tract.

44 **THENCE** with the southwest line of Lot No. 1, Section 1, McKinley Place Subdivision, S 44  
45 deg. 43 min. 02 sec. E, 587.49 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found at the north corner of  
46 that certain 0.059 acre tract described in a deed from Mary Anne Hood, Trustee, to Century Telephone  
47 of San Marcos, Inc., recorded in Volume 1289, Page 21, Hays County Deed Records, for an east  
48 corner of this tract.

49 **THENCE** with the northwest line of the Century Telephone S 45 deg. 25 min. 30 sec. W,  
50 49.94 feet to the west corner of same, a  $\frac{1}{2}$  inch iron rod with survey cap found for an interior corner of  
51 this tract.

52 **THENCE** with the southwest line of the Century Telephone tract S 44 deg. 41 min. 44 sec. E,  
53 54.41 feet to the south corner of same, a  $\frac{5}{8}$  inch iron rod set in the curving northwest line of Leah  
54 Avenue, a 60 foot roadway as shown on the Plat of Lot 3, Block 1, Section 2, McKinley Place, a  
55 subdivision as recorded in Volume 8, Page 204, Hays County Plat Records, for the east corner of this  
56 tract.

57 **THENCE** with the northwest line of Leah Avenue, along a curve to the left whose radius is  
58 330.00 feet; whose long chord bears S 10 deg. 26 min. 26 sec. W, 283.68 feet; 293.22 feet along the  
59 arc to a  $\frac{5}{8}$  inch iron rod set to replace a 60d nail found at the end of said curve.

60 **THENCE** continuing with the northwest line of Leah Avenue, S 15 deg. 07 min. 36 sec. E,  
61 99.99 feet to a  $\frac{5}{8}$  inch iron rod set to place a 60d nail at the beginning of a curve to the right.

1        **THENCE** with said curve to the right whose radius is 270.00 feet whose long chord bears S  
2 14 deg. 54 min. 21 sec. W, 270.92 feet; 293.81 feet along the arc to a 5/8 inch iron rod set at the end of  
3 said curve.

4        **THENCE** continuing with the northwest line of Leah Avenue, S 45 deg. 09 min. 50 sec. W,  
5 126.26 feet to a 1/2 inch iron rod with survey cap found where same intersects the southwest line of the  
6 before mentioned 116.94 acre tract, the east corner of that certain 1.056 acre tract described in a deed  
7 from SLC6a Joint Ventures to W.C. Carson, recorded in Volume 2074, Page 401, Hays County Deed  
8 Records, for the south corner of this tract.

9        **THENCE** with the southwest line of the 116.94 acre tract, the northeast line of the Carson  
10 1.056 acre tract and northwest line of that certain 15.92 acre tract described in a deed from W.C.  
11 Carson, Trustee, to W.C. Carson, recorded in Volume 845, Page 806, Hays County Deed Records and  
12 northeast line of that certain 0.629 acre tract described in a deed from the City of San Marcos to W.C.  
13 Carson recorded in Volume 1642, Page 141, Hays County Deed Records, N 44 deg. 36 min. 46 sec. W,  
14 at 49.84 feet pass a 1 inch iron pipe found at the north corner of the 1.056 acre tract and east corner of  
15 the Carson 15.92 acre tract at 1021.89 feet pass the north corner of the Carson 15.92 acre tract and east  
16 corner of the 0.629 acre tract, in all, 1071.80 feet to a 1/2 inch iron rod with survey cap found at the  
17 north corner of the Carson 0.629 acre tract, for an angle corner of this tract.

18        **THENCE** continuing with the southwest line of the 116.94 acre tract and northeast line of the  
19 Municipal Airport Subdivision, N 44 deg. 40 min. 01 sec. W, 199.44 feet to the POINT OF  
20 BEGINNING, containing 17.037 acres of land; and

21        **TRACT 4:** Lot A (Municipal Airport Subdivision), a subdivision in Hays County, Texas, according to  
22 the map or plat thereof, recorded in Volume 8, Page 285 of the Plat Records of Hays County, Texas.  
23 (Containing approximately 5.67 acres of land per recorded plat); and

24        **TRACT 5:** An 18.252 acres tract of land, more or less, out of the J.M. Veramendi Survey No. 1 in  
25 Hays County, Texas, and being more particularly described by metes and bounds attached hereto.

26        **BEING** an 18.252 acre tract or parcel of land out of and being a part of the J.M. Veramendi  
27 Survey No. 1 in the City of San Marcos, Hays County, Texas, and being a part of that certain 15.92  
28 acre tract described in a deed from W.C. Carson Trustees, to W.C. Carson, recorded in Volume 845,  
29 Page 806, Hays County Deed Records, and being all of that certain 0.258 acre tract described in a deed  
30 from Brian F. McCoy, et ux, to W.C. Carson, recorded in Volume 1642, Page 117, Hays County Deed  
31 Records, and being all of that certain 0.629 acre tract described in a deed from the City of San Marcos  
32 to W.C. Carson, recorded in Volume 1642, Page 141, Hays County Deed Records, and being all of that  
33 certain 1.056 acre tract described in a deed from the City of San Marcos to W.C. Carson, recorded in  
34 Volume 1642, Page 147, Hays County Deed Records and being all of that certain 1.056 acre tract  
35 described in a deed from SLC61 Joint Venture to W.C. Carson, recorded in Volume 2074, Page 401,  
36 Hays County Deed Records. Herein described tract or parcel of land being more particularly described  
37 by metes and bounds as follows:

38        **BEGINNING** at a 1/2 inch iron rod with survey cap found at the intersection of the southwest  
39 line of that certain 116.94 acre tract described in a deed from H.L. Schulle Trustee, to Mary Anne  
40 Hood, Trustee, recorded in Volume 263, Page 522, Hays County Deed Records, with the northwest  
41 line of Leah Avenue, a 60 foot roadway as shown on the Plat of Lot 1, Block A, Cottonwood Crossing,  
42 a subdivision as recorded in Volume 10 Page 151, Hays County Deed Records, the east corner of the  
43 before mentioned 1.056 acre tract recorded in Volume 2074, Page 401, Hays County Deed Records,  
44 for the east corner of this tract.

45        **THENCE** with the northwest line of Leah Avenue and southeast line of the last mentioned  
46 1.056 acre tract, S 45 deg. 18 min. 31 sec. W, 924.10 feet to a 5/8 inch iron rod set at the beginning of  
47 a curve to the right.

48        **THENCE** with said curve to the right whose radius is 15.00 feet; whose long chord bears S 75  
49 deg. 33 min. 01 sec. W, 14.70 feet, 15.36 feet along the arc to a 5/8 inch iron rod set at the end of said  
50 curve in the northeast line of Cottonwood Parkway, a future 70 foot roadway, the south corner of the  
51 1.056 acre tract, for the south corner of this tract.

52        **THENCE** with the south line of the 1.056 acre tract, N 02 deg. 28 min. 47 sec. W, 57.49 feet  
53 to the west or southwest corner of same, a 5/8 inch iron rod set in the southeast line of the before  
54 mentioned 15.92 acre tract for an interior corner of this tract.

55        **THENCE** with the southeast line of the 15.92 acre tract, S 45 deg. 19 min. 03 sec. W, 40.66  
56 feet to a 1/2 inch iron rod found where same intersects the northeast line of Cottonwood Parkway, the  
57 future 70 foot roadway for an angle corner of this tract.

58        **THENCE** with the northeast line of Cottonwood Parkway, N 44 deg. 42 min. 42 sec. W, 99.99  
59 feet to a 1/2 inch iron rod found at the beginning of a curve to the right.

1        **THENCE** with said curve to the right whose radius is 406.21 feet; whose long chord bears N  
2 23 deg. 35 min. 27 sec. W, 292.22 feet; 298.92 feet along the arc to a 5/8 inch iron rod set at the end of  
3 said curve.

4        **THENCE** continuing with the east or northeast line of Cottonwood Parkway, N 02 deg. 30  
5 min. 34 sec. W, 157.64 feet to a 5/8 inch iron rod set at the beginning of a curve to the left.

6        **THENCE** with said curve to the left whose radius is 703.87 feet whose long chord bears N 23  
7 deg. 49 min. 35 sec. W, 511.06 feet; 523.01 feet to a 1/2 inch iron rod with survey cap found at the end  
8 of said curve, the west corner of the before mentioned 0.258 acre tract and south corner of the before  
9 mentioned 0.629 acre tract.

10        **THENCE** continuing with the northeast line of Cottonwood Parkway and southwest line of  
11 the 0.629 acre tract, N 45 deg. 09 min. 49 sec. W, 50.10 feet to a 1/4 inch iron rod with survey cap  
12 found at the west corner of the 0.629 acre tract, for the west corner of this tract.

13        **THENCE** with the northwest line of the 0.629 acre tract, N 44 deg. 48 min. 48 sec. E, 547.70  
14 feet to the north corner of same, a 1/4 inch iron rod with survey cap found in the southwest line of the  
15 before mentioned Hood 116.94 acre tract, for the north corner of this tract.

16        **THENCE** with the southwest line of the Hood 116.94 acre tract, the northeast line of the 0.629  
17 acre, 15.92 acre and 1.056 acre tract, S 44 deg. 36 min. 46 sec. E, at 49.91 feet pass the east corner of  
18 the 0.629 acre and north corner of the Carson 15.92 acre tract, at 1021.96 feet pass a 1 inch iron pipe  
19 found at the east corner of the 15.92 acre and north corner of the 1.056 acre tract. In all, 1071.80 feet to  
20 the POINT OF BEGINNING, containing 18.252 acres of land.

21  
22        **SAVE AND EXCEPT THEREFROM** (unless Landlord or its Affiliate, at any time from and after the  
23 Delivery Date, shall hold title to or have control over, by deed, ground lease or otherwise, the  
24 following): the "Sam's Parcel" as shown on Exhibit B hereto.  
25

1

Exhibit A-1

2

Legal Description of Project

3        TRACT 1: Lot 5, Section 1 (Mckinley Place) and Lot 6, Section 1 (Mckinley Place), each a  
4 subdivision in Hays County, Texas, according to the map or plat thereof, recorded in Volume 9, Page  
5 186 of the Plat Records of Hays County, Texas. (Lot 5, Section 1 containing approximately 1.150  
6 acres of land and Lot 6, Section 1 containing approximately 1.140 acres of land per recorded plat —  
7 total acreage 2.290 acres); and

8        TRACT 2: Lot 7, Section 1 (Mckinley Place), a subdivision in Hays County, Texas, according  
9 to the map or plat thereof, recorded in Volume 10, Page 79 of the Plat Records of Hays County, Texas.  
10 (Containing approximately 1.661 acres of land per recorded plat); and

11        TRACT 3: A 17.037 acre tract of land, more or less, out of the J.M. Veramendi Survey No. 1  
12 in Hays County, Texas and being more particularly described by metes and bounds below.

13

14        **BEING** a 17.037 acre tract or parcel of land out of and being a part of the J.M. Veramendi  
15 Survey No. 1 in the City of San Marcos, Hays County, Texas, and being a part of that certain 116.94  
16 acre tract described in a deed from H.L. Schulle, Trustee, to Mary Anne Hood, Trustee, recorded in  
17 Volume 263, Page 522, Hays County Deed Records. Herein described tract or parcel of land being  
18 more particularly described by metes and bounds as follows:

19        **BEGINNING** at a  $\frac{1}{2}$  inch iron rod with survey cap found in the southwest line of the said  
20 116.94 acre tract at the south corner of Lot No. 4, Section 1, McKinley Place, a subdivision in said  
21 county as recorded in Volume 9, Page 186, Hays County Plat Records, for the west corner of this tract.  
22 Said point being in the northeast line of Lot A, Municipal Airport Subdivision, as recorded in Volume  
23 163, Page 161, Hays County Deed Records.

24        **THENCE** with the southeast line of Lots No. 4, 5 and 6 of Section 1, McKinley Place  
25 Subdivision, N 44 deg. 51 min. 07 sec. E, 185.22 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found; N 44  
26 deg. 47 min. 37 sec. E, 200.42 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found; N 44 deg. 48 min. 05  
27 sec. E, 199.02 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found in the southwest line of McKinley Place  
28 Drive, a 60 foot roadway as shown on plat of said subdivision, the east corner of Lot No.6, for the  
29 north corner of this tract.

30        **THENCE** with the southwest line of McKinley Place Drive, along a curve to the left whose  
31 radius is 330.00 feet; whose long chord bears S 52 deg. 11 min. 43 sec E, 82.77 feet; 82.99 feet along  
32 the arc to a  $\frac{5}{8}$  inch iron rod set at the end of said curve.

33        **THENCE** continuing with the southwest line of McKinley Place Drive, S 59 deg. 32 min. 34  
34 sec. E, 100.00 feet to a  $\frac{5}{8}$  inch iron rod set at the beginning of a curve to the right.

35        **THENCE** with said curve to the right whose radius is 270.00 feet; whose long chord bears S  
36 52 deg. 07 min. 59 sec. E, 69.90 feet; 70.10 feet to a  $\frac{5}{8}$  inch iron rod set at the end of said curve and  
37 termination of said curve, for an interior corner of this tract.

38        **THENCE** with the terminus of McKinley Place Drive, N 45 deg. 15 min. 44 sec. E, 60.00 feet  
39 to a  $\frac{1}{2}$  inch iron rod with survey cap found in the southwest line of Lot No. 1, Section 1, McKinley  
40 Place, as recorded in Volume 7, Page 156, Hays County Plat Records, the east corner of said McKinley  
41 Place Drive, for an angle corner of this tract.

42        **THENCE** with the southwest line of Lot No. 1, Section 1, McKinley Place Subdivision, S 44  
43 deg. 43 min. 02 sec. E, 587.49 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found at the north corner of  
44 that certain 0.059 acre tract described in a deed from Mary Anne Hood, Trustee, to Century Telephone  
45 of San Marcos, Inc., recorded in Volume 1289, Page 21, Hays County Deed Records, for an east  
46 corner of this tract.

47        **THENCE** with the northwest line of the Century Telephone S 45 deg. 25 min. 30 sec. W,  
48 49.94 feet to the west corner of same, a  $\frac{1}{2}$  inch iron rod with survey cap found for an interior corner of  
49 this tract.

50        **THENCE** with the southwest line of the Century Telephone tract S 44 deg. 41 min. 44 sec. E,  
51 54.41 feet to the south corner of same, a  $\frac{5}{8}$  inch iron rod set in the curving northwest line of Leah  
52 Avenue, a 60 foot roadway as shown on the Plat of Lot 3, Block 1, Section 2, McKinley Place, a  
53 subdivision as recorded in Volume 8, Page 204, Hays County Plat Records, for the east corner of this  
54 tract.

55        **THENCE** with the northwest line of Leah Avenue, along a curve to the left whose radius is  
56 330.00 feet; whose long chord bears S 10 deg. 26 min. 26 sec. W, 283.68 feet; 293.22 feet along the  
57 arc to a  $\frac{5}{8}$  inch iron rod set to replace a 60d nail found at the end of said curve.

58        **THENCE** continuing with the northwest line of Leah Avenue, S 15 deg. 07 min. 36 sec. E,  
59 99.99 feet to a  $\frac{5}{8}$  inch iron rod set to place a 60d nail at the beginning of a curve to the right.

60        **THENCE** with said curve to the right whose radius is 270.00 feet whose long chord bears S  
61 14 deg. 54 min. 21 sec. W, 270.92 feet; 293.81 feet along the arc to a  $\frac{5}{8}$  inch iron rod set at the end of  
62 said curve.

1       **THENCE** continuing with the northwest line of Leah Avenue, S 45 deg. 09 min. 50 sec. W,  
2 126.26 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found where same intersects the southwest line of the  
3 before mentioned 116.94 acre tract, the east corner of that certain 1.056 acre tract described in a deed  
4 from SLC6a Joint Ventures to W.C. Carson, recorded in Volume 2074, Page 401, Hays County Deed  
5 Records, for the south corner of this tract.

6       **THENCE** with the southwest line of the 116.94 acre tract, the northeast line of the Carson  
7 1.056 acre tract and northwest line of that certain 15.92 acre tract described in a deed from W.C.  
8 Carson, Trustee, to W.C. Carson, recorded in Volume 845, Page 806, Hays County Deed Records and  
9 northeast line of that certain 0.629 acre tract described in a deed from the City of San Marcos to W.C.  
10 Carson recorded in Volume 1642, Page 141, Hays County Deed Records, N 44 deg. 36 min. 46 sec. W,  
11 at 49.84 feet pass a 1 inch iron pipe found at the north corner of the 1.056 acre tract and east corner of  
12 the Carson 15.92 acre tract at 1021.89 feet pass the north corner of the Carson 15.92 acre tract and east  
13 corner of the 0.629 acre tract, in all, 1071.80 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found at the  
14 north corner of the Carson 0.629 acre tract, for an angle corner of this tract.

15       **THENCE** continuing with the southwest line of the 116.94 acre tract and northeast line of the  
16 Municipal Airport Subdivision, N 44 deg. 40 min. 01 sec. W, 199.44 feet to the POINT OF  
17 BEGINNING, containing 17.037 acres of land; and

18       **TRACT 4:** Lot A (Municipal Airport Subdivision), a subdivision in Hays County, Texas, according to  
19 the map or plat thereof, recorded in Volume 8, Page 285 of the Plat Records of Hays County, Texas.  
20 (Containing approximately 5.67 acres of land per recorded plat); and

21       **TRACT 5:** An 18.252 acres tract of land, more or less, out of the J.M. Veramendi Survey No. 1 in  
22 Hays County, Texas, and being more particularly described by metes and bounds attached hereto.

23       **BEING** an 18.252 acre tract or parcel of land out of and being a part of the J.M. Veramendi  
24 Survey No. 1 in the City of San Marcos, Hays County, Texas, and being a part of that certain 15.92  
25 acre tract described in a deed from W.C. Carson Trustees, to W.C. Carson, recorded in Volume 845,  
26 Page 806, Hays County Deed Records, and being all of that certain 0.258 acre tract described in a deed  
27 from Brian F. McCoy, et ux, to W.C. Carson, recorded in Volume 1642, Page 117, Hays County Deed  
28 Records, and being all of that certain 0.629 acre tract described in a deed from the City of San Marcos  
29 to W.C. Carson, recorded in Volume 1642, Page 141, Hays County Deed Records, and being all of that  
30 certain 1.056 acre tract described in a deed from the City of San Marcos to W.C. Carson, recorded in  
31 Volume 1642, Page 147, Hays County Deed Records and being all of that certain 1.056 acre tract  
32 described in a deed from SLC61 Joint Venture to W.C. Carson, recorded in Volume 2074, Page 401,  
33 Hays County Deed Records. Herein described tract or parcel of land being more particularly described  
34 by metes and bounds as follows:

35       **BEGINNING** at a  $\frac{1}{2}$  inch iron rod with survey cap found at the intersection of the southwest  
36 line of that certain 116.94 acre tract described in a deed from H.L. Schulle Trustee, to Mary Anne  
37 Hood, Trustee, recorded in Volume 263, Page 522, Hays County Deed Records, with the northwest  
38 line of Leah Avenue, a 60 foot roadway as shown on the Plat of Lot 1, Block A, Cottonwood Crossing,  
39 a subdivision as recorded in Volume 10 Page 151, Hays County Deed Records, the east corner of the  
40 before mentioned 1.056 acre tract recorded in Volume 2074, Page 401, Hays County Deed Records,  
41 for the east corner of this tract.

42       **THENCE** with the northwest line of Leah Avenue and southeast line of the last mentioned  
43 1.056 acre tract, S 45 deg. 18 min. 31 sec. W, 924.10 feet to a 5/8 inch iron rod set at the beginning of  
44 a curve to the right.

45       **THENCE** with said curve to the right whose radius is 15.00 feet; whose long chord bears S 75  
46 deg. 33 min. 01 sec. W, 14.70 feet, 15.36 feet along the arc to a 5/8 inch iron rod set at the end of said  
47 curve in the northeast line of Cottonwood Parkway, a future 70 foot roadway, the south corner of the  
48 1.056 acre tract, for the south corner of this tract.

49       **THENCE** with the south line of the 1.056 acre tract, N 02 deg. 28 min. 47 sec. W, 57.49 feet  
50 to the west or southwest corner of same, a 5/8 inch iron rod set in the southeast line of the before  
51 mentioned 15.92 acre tract for an interior corner of this tract.

52       **THENCE** with the southeast line of the 15.92 acre tract, S 45 deg. 19 min. 03 sec. W, 40.66  
53 feet to a  $\frac{1}{2}$  inch iron rod found where same intersects the northeast line of Cottonwood Parkway, the  
54 future 70 foot roadway for an angle corner of this tract.

55       **THENCE** with the northeast line of Cottonwood Parkway, N 44 deg. 42 min. 42 sec. W, 99.99  
56 feet to a  $\frac{1}{2}$  inch iron rod found at the beginning of a curve to the right.

57       **THENCE** with said curve to the right whose radius is 406.21 feet; whose long chord bears N  
58 23 deg. 35 min. 27 sec. W, 292.22 feet; 298.92 feet along the arc to a 5/8 inch iron rod set at the end of  
59 said curve.

60       **THENCE** continuing with the east or northeast line of Cottonwood Parkway, N 02 deg. 30  
61 min. 34 sec. W, 157.64 feet to a 5/8 inch iron rod set at the beginning of a curve to the left.

1        **THENCE** with said curve to the left whose radius is 703.87 feet whose long chord bears N 23  
2 deg. 49 min. 35 sec. W, 511.06 feet; 523.01 feet to a  $\frac{1}{2}$  inch iron rod with survey cap found at the end  
3 of said curve, the west corner of the before mentioned 0.258 acre tract and south corner of the before  
4 mentioned 0.629 acre tract.

5        **THENCE** continuing with the northeast line of Cottonwood Parkway and southwest line of  
6 the 0.629 acre tract, N 45 deg. 09 min. 49 sec. W, 50.10 feet to a  $\frac{1}{2}$  inch iron rod with survey cap  
7 found at the west corner of the 0.629 acre tract, for the west corner of this tract.

8        **THENCE** with the northwest line of the 0.629 acre tract, N 44 deg. 48 min. 48 sec. E, 547.70  
9 feet to the north corner of same, a  $\frac{1}{2}$  inch iron rod with survey cap found in the southwest line of the  
10 before mentioned Hood 116.94 acre tract, for the north corner of this tract.

11        **THENCE** with the southwest line of the Hood 116.94 acre tract, the northeast line of the 0.629  
12 acre, 15.92 acre and 1.056 acre tract, S 44 deg. 36 min. 46 sec. E, at 49.91 feet pass the east corner of  
13 the 0.629 acre and north corner of the Carson 15.92 acre tract, at 1021.96 feet pass a 1 inch iron pipe  
14 found at the east corner of the 15.92 acre and north corner of the 1.056 acre tract. In all, 1071.80 feet to  
15 the POINT OF BEGINNING, containing 18.252 acres of land.

1

Exhibit B

2

Site Plan

1

Exhibit C

2

Rent Commencement and Expiration Date Agreement

3

THIS RENT COMMENCEMENT AND EXPIRATION DATE AGREEMENT, made as of the  
4 day of \_\_\_\_\_, 200\_\_\_\_, by and between LINCOLN PO RED OAK VILLAGE, L.P.  
5 ("Landlord") and BED BATH & BEYOND INC. ("Tenant").

6

**WITNESSETH:**

7

WHEREAS, Landlord is the owner of a certain shopping center known as  
8 \_\_\_\_\_ (the "*Shopping Center*"), situated in \_\_\_\_\_, \_\_\_\_\_;

9

WHEREAS, by that certain Lease Agreement dated as of \_\_\_\_\_, 200\_\_\_\_ (the "*Lease*"),  
10 Landlord leased a portion (the "*Premises*") of the Shopping Center to Tenant;

11

WHEREAS, Tenant is in possession of the Premises and the Term of the Lease has  
12 commenced; and

13

WHEREAS, under Section 2.2 of the Lease, Landlord and Tenant agreed to enter into an  
14 agreement setting forth certain information in respect of the Premises and the Lease.

15

NOW, THEREFORE, Landlord and Tenant agree as follows:

16

1. The Rent Commencement Date occurred on \_\_\_\_\_, 200\_\_\_\_.

17

2. The **Initial Term** of the Lease shall expire on January 31, 20\_\_\_\_, unless Tenant  
18 exercises any option to extend the Term of the Lease or unless the Lease terminates earlier as provided  
19 in the Lease.

20

3. The date of commencement of the **first Renewal Period** shall be February 1, 20\_\_\_\_, if  
21 Tenant effectively exercises its option in respect thereof, and if Tenant does so, the Term of the Lease  
22 shall expire on January 31, 20\_\_\_\_, unless Tenant exercises any option to further extend the Term of the  
23 Lease or unless the Lease terminates earlier as provided in the Lease.

24

4. The date of commencement of the **second Renewal Period** shall be February 1, 20\_\_\_\_, if  
25 Tenant effectively exercises its option in respect thereof, and if Tenant does so, the Term of the  
26 Lease shall expire on January 31, 20\_\_\_\_, unless Tenant exercises any option to further extend the Term of the  
27 Lease or unless the Lease terminates earlier as provided in the Lease.

28

5. The date of commencement of the **third Renewal Period** shall be February 1, 20\_\_\_\_, if  
29 Tenant effectively exercises its option in respect thereof, and if Tenant does so, the Term of the Lease  
30 shall expire on January 31, 20\_\_\_\_, unless the Lease terminates earlier as provided in the Lease.

31

6. Capitalized terms used, but not defined, herein shall have the meanings ascribed to them  
32 in the Lease.

1 IN WITNESS WHEREOF, the parties hereto have caused this Rent Commencement and  
2 Expiration Date Agreement to be executed the date and year first above written.

3

**LANDLORD:**

LINCOLN PO RED OAK VILLAGE, L.P.,  
a Delaware limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By its general partner, LINCOLN MFIL RED  
OAK, LTD., a Texas limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By its general partner, LINCOLN GP RED  
OAK, INC., a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

BED BATH & BEYOND INC.,  
a New York corporation

By: \_\_\_\_\_  
Name: Warren Eisenberg  
Title: Co-Chairman

4

1

Exhibit D

2

Specifications for Landlord's Work

San Marcos, TX

Exhibit D - Standard Landlord's Work

08/23/05

[All capitalized terms used, but not otherwise defined herein shall have the meanings ascribed to them in the Lease. The terms of the Lease regarding Landlord's Work shall be deemed to supplement the provisions of the Exhibit D, to the extent not inconsistent with the terms of this Exhibit D. It is specifically understood and agreed that all materials and supplies shall be installed in strict accordance with all manufacturers' specifications.]

Landlord's Final Plans and Specifications

Landlord shall provide one (1) complete full size set, one (1) complete  $\frac{1}{2}$  size set and one (1) copy of electronic file of the Final Plans and Specifications as well as each subsequent revision to Landlord's Plans for Tenant's use. Landlord shall develop project-specific Final Plans and Specifications in accordance with following documents.

A. Tenant's Plans consist of the following: FIXTURE PLAN (F1); FLOOR FINISH PLANS, NOTES AND DETAILS (F2); POWER/SPECIALTY LIGHTING PLANS AND NOTES (F3); LIGHTING PLANS AND NOTES (F4); and HIGH PILE STORAGE PLAN (F5). Tenant's Plans are project-specific design-development documents. In the event of a conflict between Tenant's Plans and "Tenant's Prototype Drawings and Specifications" (defined below), then Tenant's Plans shall govern and prevail. Tenant's Plans shall be delivered to Landlord in accordance with Article 3 of the Lease.

B. Tenant's Prototype Drawings and Specifications entitled "Bed Bath & Beyond Prototype Drawings and Specifications – version 1.2005, dated 03-01-05 developed by Casco Architects, comprise the following drawings and specifications:

All site specific plans and specifications developed by Landlord and submitted to Tenant for review and approval must be in the same Format as Tenant's Prototypical Plans and Specifications as outlined within Item C. below of this Exhibit unless otherwise authorized in writing by Tenant.

Tenant shall not be obligated to review nor approve improperly formatted Landlord's Plans and/or specifications, nor shall said submission be deemed to be in compliance with Section 3.2 "Plan Approvals" of the Lease, unless said Format is complied with.

Tenant reserves the right to immediately disapprove and return improperly formatted plans to the Landlord and the Landlord shall be solely responsible for all costs and/or delays relating to revising/correcting and resubmitting the plans and/or specifications to Tenant for re-review and approval.

C.

<u>SHEET #</u>	<u>DRAWING TITLE</u>	<u>CURRENT ISSUE</u>	<u>DRAWING DATE</u>
A0.1	Code Data, Project Data and Responsibility Schedule	Prototype Version 1.2005	03/01/05
A0.2	Generic Site Requirements Plan	Prototype Version 1.2005	03/01/05
A1.1	Site Details	Prototype Version 1.2005	03/01/05
A1.2	Demolition Plan	Prototype Version 1.2005	03/01/05
A2.1	Store Fixture/Egress Path Plan & Notes	Prototype Version 1.2005	03/01/05
A2.2	Floor Plan	Prototype Version 1.2005	03/01/05
A2.3	Floor Finish Plan	Prototype Version 1.2005	03/01/05
A2.4	Reflected Ceiling Plans & Notes	Prototype Version 1.2005	03/01/05
A2.5	Roof Plan Details & Notes	Prototype Version 1.2005	03/01/05
A3.1	Finish Schedule, Storefront Types & Vestibule Elevations	Prototype Version 1.2005	03/01/05
A3.2	Door Hardware, Door Schedule & Door Types	Prototype Version 1.2005	03/01/05
A3.3	BBB National Account Vendors & Specified Manufacturers w/Distribution Schedule	Prototype Version 1.2005	03/01/05
A4.1	Exterior Elevations	Prototype Version 1.2005	03/01/05
A5.1	Building Sections, Interior Wall Sections	Prototype Version 1.2005	03/01/05
A5.2	Exterior Wall Sections	Prototype Version 1.2005	03/01/05
A5.3	Exterior Wall Sections	Prototype Version 1.2005	03/01/05
A5.4	Exterior Wall Sections	Prototype Version 1.2005	03/01/05
A5.5	Interior Wall Sections	Prototype Version 1.2005	03/01/05
A5.6	<u>Alternate</u> Scissor Lift Plan, Section, Specification & Notes	Prototype Version 1.2005	03/01/05
A6.1	Exterior Details	Prototype Version 1.2005	03/01/05
A6.2	Interior & Exterior Details	Prototype Version 1.2005	03/01/05
A6.3	Slatwall Details at Storefront	Prototype Version 1.2005	03/01/05
A7.1	Large Scale Plans & Partition Types	Prototype Version 1.2005	03/01/05
A7.2	Large Scale Plans & Partition Types	Prototype Version 1.2005	03/01/05
A7.2a	<u>Alternate</u> Large Scale Plans & Partition Types (38k SF Building)	Prototype Version 1.2005	03/01/05

DB  
9/14/05

A8.1	Interior Details	Prototype Version 1.2005	03/01/05
A8.2	Interior Details	Prototype Version 1.2005	03/01/05
A8.3	Customer Service Desk	Prototype Version 1.2005	03/01/05
A8.4	Register Bays	Prototype Version 1.2005	03/01/05
A8.5	Remote Service Desks	Prototype Version 1.2005	03/01/05
A9.1	Interior Elevations	Prototype Version 1.2005	03/01/05
A9.1a	<u>Alternate</u> Interior Elevations (38K SF Building)	Prototype Version 1.2005	03/01/05
A9.2	<u>Alternate</u> Elevations & Details	Prototype Version 1.2005	03/01/05
A9.3	<u>Alternate</u> Plans, Elevations & Details	Prototype Version 1.2005	03/01/05
A9.4	FTG Fixture Plan & Vendor Responsibility Schedule	Prototype Version 1.2005	03/01/05
A9.4a	<u>Alternate</u> FTG Fixture Plan & Vendor Responsibility Schedule (Corner)	Prototype Version 1.2005	03/01/05
A9.4b	<u>Alternate</u> FTG Fixture Plan & Vendor Responsibility Schedule (Freestanding w/o Bulkhead)	Prototype Version 1.2005	03/01/05
A9.5	FTG Plans, Wall Sections & Details	Prototype Version 1.2005	03/01/05
A9.5a	<u>Alternate</u> FTG Plans, Wall Sections & Details (Corner)	Prototype Version 1.2005	03/01/05
A9.6	<u>Alternate</u> Awning Details	Prototype Version 1.2005	03/01/05
A9.7	<u>Alternate</u> Awning Details	Prototype Version 1.2005	03/01/05
A9.8	<u>Alternate</u> Wall Sections at Awning	Prototype Version 1.2005	03/01/05
HP1.1	High Pile Storage Plan & Fixture-Shelf Details	Prototype Version 1.2005	03/01/05
S1.1	Structural General Information & Typical Details	Prototype Version 1.2005	03/01/05
S2.1	Foundation Plan	Prototype Version 1.2005	03/01/05
S2.2	Roof Framing Plan	Prototype Version 1.2005	03/01/05
S3.1	Foundation Details	Prototype Version 1.2005	03/01/05
S3.2	Roof Framing Details	Prototype Version 1.2005	03/01/05
P1.1	Plumbing Riser Diagrams and Fixture Schedule	Prototype Version 1.2005	03/01/05
P2.1	Plumbing Floor Plan	Prototype Version 1.2005	03/01/05
P3.1	Plumbing Enlarged Plans & Details	Prototype Version 1.2005	03/01/05
FP1.0	Fire Sprinkler Plans, Notes & Details	Prototype Version 1.2005	03/01/05
FA1.0a	Base System Fire Alarm Plans, Notes & Details	Prototype Version 1.2005	03/01/05
FA1.1a	Base System Misc. Notes & Details	Prototype Version 1.2005	03/01/05
FA1.2a	Base System Fire Alarm Matrix & Calcs	Prototype Version 1.2005	03/01/05
FA1.0b	<u>Alternate</u> Fire Alarm Plans w/Occupant Notification Alarm	Prototype Version 1.2005	03/01/05
FA1.1b	<u>Alternate</u> Fire Plans w/Occupant Notification Notes & Details	Prototype Version 1.2005	03/01/05
FA1.2b	<u>Alternate</u> Fire Alarm Plans w/Occupant Notification Matrix & Calcs	Prototype Version 1.2005	03/01/05
FA1.0c	<u>Alternate</u> Fire Alarm Plans w/Smoke Detection	Prototype Version 1.2005	03/01/05
FA1.1c	<u>Alternate</u> Fire Alarm Plans w/Smoke Detection Notes & Details	Prototype Version 1.2005	03/01/05
FA1.2c	<u>Alternate</u> Fire Alarm Plans w/Smoke Detection Matrix & Calcs	Prototype Version 1.2005	03/01/05
M1.1	Mechanical General Information	Prototype Version 1.2005	03/01/05
M2.1	Mechanical Floor Plan	Prototype Version 1.2005	03/01/05
M3.1	Mechanical Large Scale Plans & Details	Prototype Version 1.2005	03/01/05
M4.1	Mechanical Schedules & Details	Prototype Version 1.2005	03/01/05
E1.1	Electrical General Information & Schedules	Prototype Version 1.2005	03/01/05
E2.1	Power Plan	Prototype Version 1.2005	03/01/05
E2.2	Lighting Layout Plan	Prototype Version 1.2005	03/01/05
E2.3	Lighting Circuiting Plan	Prototype Version 1.2005	03/01/05
E2.4	Specialty Lighting Plans & Diagrams	Prototype Version 1.2005	03/01/05
E3.1	Electrical Large Scale Plans & Details	Prototype Version 1.2005	03/01/05
E3.2	Lighting Sequencing	Prototype Version 1.2005	03/01/05
E3.3	Electrical Details	Prototype Version 1.2005	03/01/05
E4.1	Electrical Schedules	Prototype Version 1.2005	03/01/05
E4.2	Electrical Diagrams	Prototype Version 1.2005	03/01/05
E4.3	Electrical Schedules	Prototype Version 1.2005	03/01/05
E4.4	Novar Wiring Details	Prototype Version 1.2005	03/01/05
E4.4a	<u>Alternate</u> Novar Wiring Details for RTU's Other Than Lennox	Prototype Version 1.2005	03/01/05
E4.5	ETM Details for Lennox RTU's	Prototype Version 1.2005	03/01/05
E4.5a	<u>Alternate</u> ETM Wiring Details For Non-Lennox RTU's	Prototype Version 1.2005	03/01/05

E5.1	FTG Power, Lighting & Specialty Lighting	Prototype Version 1.2005	03/01/05
E5.1a	<u>Alternate</u> FTG Power, Lighting Specialty Lighting (Corner)	Prototype Version 1.2005	03/01/05
E5.1b	<u>Alternate</u> FTG Power, Lighting, Specialty Lighting (Freestanding w/o Bulkhead)	Prototype Version 1.2005	03/01/05
E6.1	<u>Bid Alternate:</u> Modular Wiring (Data Only) Plans & Details	Prototype Version 1.2005	03/01/05

Project Manual for Bed Bath & Beyond, dated March 01, 2005.

D. Neither Tenant's Plans nor Tenant's Prototype Drawings and Specifications reflect regional or governmental requirements. Such regional/governmental requirements may include but not limited to the following: Stockroom/Sales Area partition between sales area and stockroom may be required including all openings through the partition be properly protected; Disability access to mezzanine level such as an ADA lift, limited use/limited application elevator, or elevator may be required including installation of phone lines to cab; The number of restroom fixtures, number of exit stairs, smoke purge and pressurization system, smoke/heat vents, draft curtains, fire rated walls, ceiling or floors required to meet high pile storage requirements, etc. may need to be modified to comply with all applicable Legal Requirements.

In addition, Landlord shall include the following items as part of the Final Plans and Specifications:

1. All architectural elevations and construction details for all pylon, monument and directional signs located throughout the Shopping Center.
2. All architectural elevations and partial sidewalk plans of all other tenants and occupants of the Shopping Center.
3. Complete civil engineering documents that describe planned improvements to the Shopping Center, including geo-technical and storm water design reports, if requested by Tenant.

#### Site Specifications

- A. All parking areas and traffic drives in the Shopping Center shall consist of a minimum 8" of lime subgrade (95% compacted), 10" flexible base, 2" of asphalt. Grading of these areas shall not exceed a slope of 2%. Utilization of any portion of the parking field for above ground storm water retention/detention is not acceptable to Tenant.
- B. All truck access drives in the Shopping Center shall consist of heavy duty asphalt, (8" lime, 2" asphalt over 12" crushed limestone). Grading of these areas are not to exceed a slope of 3%.
- C. All truck ramps and dumpster pads shall consist of heavy duty concrete (6" crushed lime, #3 re-bars @18" and 7" reinforced concrete). All truck ramps shall consist of #4 re-bars, 18" o/c. each direction. Recessed truck ramps shall not exceed slope of 5%.

If Landlord's geo-technical report for the Shopping Center recommends more stringent requirements, then the geo-technical report recommendations shall supersede the criteria stated in items A, B, and C above.

D. The minimum lighting level throughout the Shopping Center (parking areas, traffic drives, service drives, etc.) shall be at least two (2) foot-candles, measured 30" above grade. Landlord shall include a photometric plan, which shall confirm that the proposed lighting meets these requirements as part of the Final Plans and Specifications. Landlord shall not include illumination from building-mounted wall packs when calculating the required foot-candle level. Landlord shall provide low level security lighting min. (1) foot-candle throughout center that shall remain illuminated from dusk to dawn seven days a week.

#### Building Requirements

The following describes project-specific elements of Landlord's Work in addition to the scope detailed in Tenant's Prototype Drawings and Specifications:

- A. Clear Height - Building systems (plumbing & electrical) shall be designed to allow Tenant to stock merchandise up to at least 16'-6" a.f.f. All plumbing and electrical elements shall be located at least 16'-6" a.f.f., except for Tenant's light fixtures. Mechanical shall be designed at a minimum of 17'-6" a.f.f. to bottom of duct. Maximum bottom of supply and return duct height shall not exceed 19'-0" a.f.f. Fire protection sprinkler piping (main and branch lines) shall be located at least 16'-6" a.f.f., sprinkler heads shall be located within 1" minimum and 6" maximum from the roof/floor deck. Bottom of all structural elements shall be located at least 18'-4" a.f.f.
- B. Fire Alarm System - Landlord shall furnish and install a fire alarm system in accordance with the minimum base standards set forth in Tenant's Prototypical Plans and Specifications, or more stringent requirements as may be required by law. Landlord shall be responsible for monitoring the fire alarm system up to 90 days after the Delivery Date.

LL shall issue complete fire alarm system submittal consisting of site specific drawings and equipment cut sheets to CCI for their review and approval no later than (12) weeks prior to projected delivery date. The fixed cost to LL for this initial review is \$550.00 plus reimbursables associated with printing and shipping. If subsequent reviews are required by CCI due to initial rejection, then fixed cost to LL for subsequent reviews shall be on a time and material basis. The hourly rate for these subsequent reviews shall be \$125.00/hour plus reimbursables associated with printing and shipping.

Mr. Will Smith  
Code Consultants, INC.

Work: (314) 991-2633  
Fax: (314) 991-4614  
1804 Borman Circle Drive  
St. Louis, Missouri 63146-4136

- C. 1<sup>st</sup> Level Structure (sales/non-sales level) - Landlord shall provide a minimum 4000 psi concrete floor slab having a minimum thickness of 4". Structural system shall be rated to accept 125 lb. per square foot of live load. If rebar or pretensioned or post-tensioned steel is required, it shall not be placed within the top 2 1/2" of the concrete slab.
- D. Sprinkler System - The sprinkler system shall be designed to allow fixturing and storage to be within 18" of heads. System shall comply with NFPA 231-C and or NFPA13, (high-rack storage) for class IV commodity solid shelves, minimum 4 foot aisles. Typically, .486 GPM over 2000 sf will be required.
- E. Landlord shall provide sprinkler system sufficient to meet the requirements specified within Tenant's Prototype Drawings and Specifications without utilizing a fire pump if existing water pressure allows. If water pressure is inadequate and system cannot be designed to properly function without incorporating a fire pump, then Landlord shall locate Fire Pump outside of Premises. Landlord shall maintain Fire Pump for the full term of the Lease without any cost to Tenant. Landlord shall, without any cost to Tenant and for the full term of the Lease, routinely inspect, test, and maintain the Fire Pump in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems (Chapter 5 of 1998 Edition).
- F. LL shall issue complete fire protection submittal consisting of site specific head locations, hydraulic calculations and equipment cut sheets to CCI for their review and approval no later than (12) weeks prior to projected delivery date. The fixed cost to LL for this initial review is \$550.00 plus reimbursables associated with printing and shipping. If subsequent reviews are required by CCI due to initial rejection, then fixed cost to LL for subsequent reviews shall be on a time and material basis. The hourly rate for these subsequent reviews shall be \$125.00/hour plus reimbursables associated with printing and shipping.  
If BBBY national fire protection consultants are needed to assist LL with approvals from governmental authorities such as completing technical discussions with governmental authorities to explain/clarify design parameters, calculations, high pile storage commodity classifications, fire pump design, etc., then LL shall directly pay consultant for all time and materials. If LL fails to pay consultant, then Tenant shall have the right to receive a credit against "Changes" under the lease or deduct amount from Rent in order to satisfy outstanding invoice.

Mr. Will Smith  
Code Consultants, INC.  
Work: (314) 991-2633  
Fax: (314) 991-4614  
1804 Borman Circle Drive  
St. Louis, Missouri 63146-4136

- G. If fire-proofing of structural elements is required, then Landlord shall use intumescent fire resistive coating. All edges of application shall be neat, clean and straight. All edges of material to be parallel to structural element being treated.
- H. If applicable, Landlord shall complete and make operational all vertical transportation equipment (passenger and freight elevators, escalators, cart conveyors, etc.) a minimum of (2) two weeks in advance of Delivery. Landlord shall continuously operate such equipment in accordance with manufacturers recommendations during this (2) week period in order to allow equipment to properly "Burn-In". "Burn-In" required in order to identify and repair any potential mechanical deficiencies that may exist with the equipment prior to Delivery.

#### Construction Coordination Requirements

- A. Landlord shall provide Tenant with a critical path schedule within (2) weeks of commencement of Landlord's Work, and shall provide to Tenant's construction project manager an updated critical path schedule every two weeks thereafter until Landlord's Work is completed
- B. Throughout the period during which Landlord's Work is being performed, Landlord shall provide to Tenant's construction project manager, on a weekly basis, then-current photographs of the interior and exterior of the Premises, and the Shopping Center site, showing the progression of Landlord's Work. All photographs shall be in a digital format, and transmitted to Tenant at e-mail address at [BBB.2000photos@bedbath.com](mailto:BBB.2000photos@bedbath.com)

#### Building and Site Signs

- A. Building Signs -- Landlord shall furnish and install all building signs shown on Exhibits D-1 and F utilizing Tenant's specified vendor only. Landlord is responsible to verify actual number of circuits required with Tenant's specified vendor. Conduit to be installed continuously from Tenant's panel in Premises to sign location(s). Landlord required to execute purchase order with Tenant's specified vendor within 10 weeks prior to Delivery Date. If Landlord fails to execute purchase order within this time frame, then at Tenant's option, Tenant may execute purchase order with Tenant's specified vendor and deduct all costs from rent, (or , at Tenant's option , receive a credit against "Changes" under the lease). If Tenant does not provide written notice to Landlord regarding Tenant's decision to execute purchase order with Tenant's specified vendor, then Landlord shall remain responsible to execute purchase order.
- B. Remote Building Signs -- NA

- C. Pylon/Monument/Directional Signs -- Landlord shall furnish and install all pylon /monument /directional signs (s) shown on Exhibit F to this Lease, complete (including, without limitation, sign structure, any required electrical service, sign panels, and Tenant's specified graphics).
- D. Temporary Signs -- commencing on the Effective Date, and continuing thereafter through the Rent Commencement Date, Landlord shall furnish, install and maintain, for such duration as Tenant may desire, and in accordance with Tenant's Prototype Drawings and Specifications [and Exhibit F to this Lease, as applicable]: (i) a temporary banner bearing the phrase "Coming Soon" on the storefront of the Premises, and (ii) a temporary sign near the site of the [future] main entrance to the Shopping Center, bearing the phrase "Bed Bath & Beyond Coming Soon". At Tenant's request, Landlord shall relocate Tenant's temporary signage, in the event the visibility thereof becomes obstructed. Landlord shall secure banners through the following vendor:

Corporate Identification Solutions  
3521 North Elston Avenue  
Chicago, IL 60618  
Attn: Sarah Glenn  
P: 773.604.4800  
F: 773.604.4848  
sarah@corporateidsolutions.com  
www.corporateidsolutions.com

- E. Landlord shall provide complete shop drawings of all Landlord-furnished signs to Tenant for Tenant's approval at least (12) weeks prior to delivery date.

#### Permits and Approvals

- A. Landlord to secure all permits required to allow Tenant to fixture, merchandise (including without limitation permits for it's for prepackaged foods), and open for business to the public in the Premises.

If Seismic calculations, plans and details are required, then Landlord shall be obligated to contract with "Seizmic Inc." no later than (12) weeks prior to delivery. Seizmic Inc. shall provide the necessary services to assist Landlord in securing the fixture permit. These services include completion of all required submittal documents, required applications, responses to inquiries from the authority having jurisdiction and monitoring status of permit. Actual submission of the required documents to the AHJ shall be made only by Seizmic, Inc., or other vendor selected at Tenant's discretion.

Seizmic Inc.  
Contact: Sal Fateen or Genie Fateen  
161 Atlantic Street, Pomona, CA 91768  
Ph. # 909 869 0989

Landlord shall be obligated to take possession of Fixture permit and transfer permit to Tenant's fixture Installer. If fixture permit is required, then Landlord shall secure fixture permit no later than (2) weeks prior to delivery date.

- B. Sprinkler system design shall allow Landlord to obtain and secure "high pile storage" permit.

#### Construction Closeout

- A. Landlord shall be obligated to forward (1) hard copy of all required documents outlined with Section 01700 – Contract Closeouts, of Tenant's Prototype Specifications / Project Manual to **Digital Reliance Incorporated (DRI)**, 386 Charmel Place, Columbus, OH 43235, (614) 430-5950, [jg@digital-reliance.com](mailto:jg@digital-reliance.com), for purpose of scanning to disk for Tenant's future use. All documents shall be delivered to DRI within thirty (30) days after the "Substantial Completion Date". The cost associated with this service is \$500.00. All costs associated with this service shall be Landlord's responsibility.

Prior to scanning, DRI will confirm submittal from Landlord meets base minimum requirements and shall inform Landlord directly if certain documents are missing. DRI will not review items for content. The content will be reviewed once electronic file has been received by Tenant's Construction Project Manager. Any need for resubmittal due to incorrect content, etc. will be communicated to Landlord from Tenant's Construction Project Manager. Landlord to resubmit amended document to DRI for scanning and incorporation into file until approved by Tenant's Construction Project Manager.

Once Electronic file has been completed, It shall be forwarded directly to Tenant's Construction Project Manager with transmittal copy to Landlord within sixty (60) days after the "Substantial Completion Date".

- B. Landlord shall cause its contractor(s) to instruct Tenant's Construction Project Manager in the operation of any equipment installed pursuant to these specifications. All of Landlord's Work shall be performed in a manner which will not void, impair or diminish any manufacturers', installers', or contractors' warranties which otherwise would have been provided by such manufacturer, installer, or contractor to either Landlord or Tenant. Two (2) months prior to the end of the warranty period, Landlord must forward a written report to Tenant on the condition of all warranty items.

- C. If Landlord fails to deliver any of the instruments and items (collectively, the "Close-out Documents") described in the immediately preceding paragraph A within the prescribed thirty (60) day period, then Tenant may provide Landlord with notice of such failure. If Landlord has not remedied such failure within fifteen (15) days after Tenant's delivery of such notice, then Tenant shall be entitled to an abatement in Rent in the amount of One Hundred (\$100.00) dollars for each day that Landlord has not so delivered all of the Close-out Documents.
- D. Final cost - Landlord shall provide Tenant with "final cost" within thirty (30) days after the Substantial Completion Date.
- E. Landlord shall be obligated to provide to Tenant within 30 days of Tenant's request copies of manufacturers invoice(s), manufacturers cut sheets, Subcontractor invoices, etc. for any item or items described within Exhibit D - Standard Landlord's Work.

1

Exhibit D-2

2

Exterior Elevations of the Shopping Center

1

Exhibit E

2

Permitted Encumbrances

3 1. Easement Deed dated February 23, 1976 between Mary Ann Hood, Trustee and the City of San  
4 Marcos and recorded in Volume 282, Page 84 and as shown on the Plat(s) recorded in Volume 9 Pages  
5 186 and Volume 10, page 79 of the Plat Records, all of Hays County, Texas. (TRACTS 1 AND 2)

6 2. Public utility and drainage easement in favor of the City of San Marcos, recorded in Volume  
7 1340, Page 417 of the Public Records of Hays County. (TRACT 5)

8 3. Water/wastewater Easement recorded under Clerk's File No. 9924116 of the Official Public  
9 Records of Hays County, Texas and reflected on Plats recorded in Volume 9, Page 186, Volume 10,  
10 Page 79 of the Plat Records. (TRACTS 1 AND 2)

11 4. Access easement reflected on Plat recorded in Volume 7, Page 156 of the Plat Records of Hays  
12 County, Texas. (TRACTS 1 AND 2)

13 5. Access easements, public utility easements and a temporary truck turnaround all as reflected on  
14 Plat recorded in Volume 9, Page 186 AND Volume 10, Page 79 of the Plat Records of Hays County,  
15 Texas. (TRACTS 1 AND 2)

16 6. Temporary turnaround easement, public utility easements, waterline easements, drainage  
17 easements and right-of-way all as reflected by the plat recorded in Volume 10, Page 151 of the Plat  
18 Records of Hays County, Texas. (TRACT 5)

19 7. Public utility easement 20' wide along the Northwest property line and 15' wide along the  
20 Northeast property line of the subject property, as reflected by the plat recorded in Volume 8, Page 285  
21 of the Plat Records of Hays County, Texas. (TRACT 4)

22 8. Declaration of Covenants, Conditions and Restrictions as recorded in Volume 1229, Page 830  
23 of the Official Public Records of Hays County. (TRACT 1, 2 and 3)

24 9. Reciprocal Easement Agreement dated June 19, 1998, executed by and between Mary Anne  
25 Hood, Trustee and PBA Development, Inc, a Texas corporation recorded in Volume 1426, page 1 of  
26 the Official Public Records of Hays County, Texas. (TRACTS 1, 2 and 3).

27 10. Waste water lift station on the subject property as reserved in Declaration recorded in Volume  
28 1913, Page 326 of the Public Records of Hays County, Texas. (TRACT 5)

29 11. Temporary turnaround easement off of McKinley Place Drive into the subject property as  
30 shown on the Plat recorded in Volume 9, Page 186 of the Plat Records of Hays County, Texas.  
31 (TRACT 3)

32 12. Temporary turnaround easement located in the Southwest corner of TRACT III as reflected by  
33 the plat recorded in Volume 8, Page 204, Volume 10, Page 110, of the Plat Records of Hays County,  
34 Texas.

35 13. Subject to the provisions of Sections 2.3.1(f) and 17.3 of this Lease, that certain Construction  
36 Deed of Trust, Assignment, Security Agreement and Financing Statement, dated as of June 30, 2005,  
37 by Landlord in favor of JPMorgan Chase Bank, N.A., recorded as Document Number 05018588 of the  
38 Plat Records of Hays County, Texas.

39 **Landlord represents and warrants that (i) none of the foregoing will interfere with or**  
40 **prevent Tenant from operating its Premises in accordance with the terms of this Lease, (ii)**  
41 **conflict with any right granted Tenant under this Lease, (iii) impose on Tenant any obligation(s)**  
42 **in excess of those set forth in this Lease, and (iv) none of the foregoing easements or rights of way**  
43 **(a) are located beneath the Premises, or (b) will interfere with Tenant's use and enjoyment of the**  
44 **Premises.**

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Exhibit F

2

Tenant's Signage

3

1

Exhibit G

2

Form of Subordination, Non-Disturbance and Attornment Agreement

3

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ [corporation] [limited] [general] [partnership] [national banking association], having an office at \_\_\_\_\_ (the "Mortgagee") and Bed Bath & Beyond Inc., a New York corporation, having an office at 650 Liberty Avenue, Union, New Jersey 07083 (the "Tenant").

9

WITNESSETH:

10

WHEREAS, Mortgagee is the holder of a mortgage (the "Mortgage") covering a parcel of land owned by \_\_\_\_\_, a \_\_\_\_\_ [corporation], [limited] [general] [partnership] (the "Landlord") together with the improvements [to be] erected thereon (said parcel of land and improvements thereon being hereinafter referred to as the "Shopping Center" and being more particularly described on Exhibit A attached hereto and made a part hereof); and

15

WHEREAS, by a certain Lease Agreement heretofore entered into between Landlord and Tenant dated as of \_\_\_\_\_ (the "Lease"), Landlord leased to Tenant a portion of the Shopping Center, as more particularly described in the Lease (the "Premises"); and

18

WHEREAS, a copy of the Lease has been delivered to Mortgagee, the receipt of which is hereby acknowledged; and

20

[For mortgages existing as of the date Lease is executed: WHEREAS, as an inducement to Tenant to enter into the Lease, [Section 2.3.1/Section 17.3] thereof provides that the Lease is conditioned upon Landlord obtaining this Agreement from Mortgagee; and

23

WHEREAS, the parties desire to satisfy the foregoing condition and to provide for the non-disturbance of Tenant by the holder of the Mortgage; and]

25

[For mortgages occurring after the Lease is executed: WHEREAS, Section 17.1 of the Lease provides that the Lease shall become subject and subordinate to a mortgage encumbering the fee interest of Landlord in and to the Shopping Center if and when a non-disturbance agreement is entered into with respect to such mortgage; and

29

WHEREAS, the parties hereto desire to effect the subordination of the Lease to the Mortgage and to provide for the non-disturbance of Tenant by Mortgagee.]

31

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, agree as follows:

33

1. Mortgagee hereby consents to and approves the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

37

2. Tenant covenants and agrees with Mortgagee that the Lease hereby is made and shall continue hereafter to be subject and subordinate to the lien of the Mortgage, and to all modifications and extensions thereof (and such subordination shall not lessen or diminish Tenant's rights under the Lease), subject, however, to the provisions of this Agreement.

41

3. Mortgagee agrees that so long as the Lease shall be in full force and effect, and so long as Tenant shall not be in default under the Lease beyond any applicable notice and grace period:

43

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note or other obligation secured thereby, provided, however, if applicable law requires that Tenant be named in such suit, action or proceeding, Tenant may be named provided that: (i) there be no adverse affect on Tenant, and (ii) such suit, action or proceeding does not interfere with Tenant's rights under the Lease or otherwise cause a termination of the Lease;

49

(b) The possession by Tenant of the Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise

1 affected by (i) any suit, action or proceeding brought upon the Mortgage or the bond or note or other  
2 obligation secured thereby, or for the foreclosure of the Mortgage or the enforcement of any rights  
3 under the Mortgage, or by any judicial sale or execution or other sale of the Premises or the Shopping  
4 Center, or any deed given in lieu of foreclosure, or by the exercise of any other rights given to any  
5 holder of the Mortgage or other documents as a matter of law, or (ii) any default under the Mortgage or  
6 the bond or note or other obligation secured thereby; and

7 (c) All condemnation awards and insurance proceeds paid or payable with respect  
8 to the Premises or any other part of the Shopping Center shall be applied and paid in the manner set  
9 forth in the Lease.

10 4. If Mortgagee or any future holder of the Mortgage shall become the owner of the  
11 Shopping Center by reason of foreclosure of the Mortgage or otherwise, or if the Shopping Center  
12 shall be sold as a result of any action or proceeding to foreclose the Mortgage, or transfer of ownership  
13 by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity  
14 for executing any new lease, as a direct lease between Tenant and the then owner of the Shopping  
15 Center, as "landlord", upon all of the same terms, covenants and provisions contained in the Lease, and  
16 in such event:

17 (a) Tenant shall be bound to such new owner under all of the terms, covenants and  
18 provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant  
19 elects or has elected to exercise its options to extend the term) and Tenant hereby agrees to attorn to  
20 such new owner and to recognize such new owner as "landlord" under the Lease; and

21 (b) Such new owner shall be bound to Tenant under all of the terms, covenants and  
22 provisions of the Lease for the remainder of the term thereof (including the Renewal Periods, if Tenant  
23 elects or has elected to exercise its options to extend the term) which such new owner hereby agrees to  
24 assume and perform and Tenant shall, from and after the date such new owner succeeds to the interest  
25 of "landlord" under the Lease, have the same remedies against such new owner for the breach of any  
26 covenant contained in the Lease that Tenant might have had under the Lease against Landlord if such  
27 new owner had not succeeded to the interest of "landlord"; provided, however, that such new owner  
28 shall not be:

29 (i) liable for any act or omission of any prior landlord (including Landlord)  
30 unless such act or omission continues from and after the date upon which the new owner succeeds to  
31 the interest of such prior landlord;

32 (ii) subject to any defenses which Tenant may have against any prior  
33 landlord (including Landlord) unless resulting from any default or breach by such prior landlord which  
34 continues from and after the date upon which the new owner succeeds to the interest of such prior  
35 landlord;

36 (iii) subject to any offsets which Tenant may have against any prior landlord,  
37 except to the extent such offsets are expressly provided under the Lease and Mortgagee has received  
38 notice thereof and the opportunity to cure within the applicable time periods set forth in the Lease (it  
39 being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon  
40 which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

41 (iv) bound by any fixed rent or additional rent which Tenant might have paid  
42 for more than one month in advance of its due date under the Lease to any prior landlord (including  
43 Landlord), unless such additional rent is paid in accordance with the applicable provisions of the  
44 Lease; or

45 (v) bound by any amendment or modification of the Lease made without its  
46 consent; notwithstanding the foregoing, Mortgagee acknowledges that the Lease specifically provides  
47 for amendments thereof upon the occurrence of certain events described in the Lease (such as, for  
48 example, an amendment to the Lease confirming the measurement of the Premises), and, by its  
49 execution below, Mortgagee agrees to recognize such amendments as part of the Lease, and Mortgagee  
50 further agrees that such new owner shall also be bound by such amendment(s) to the Lease, without  
51 any consent on the part of Mortgagee or such new owner.

52 (c) Tenant's obligations hereunder shall be effective only so long as Mortgagee is  
53 bound to Mortgagee's obligations hereunder.

1       5. Tenant will notify Mortgagee of any default by Landlord under the Lease which would  
2 entitle Tenant to terminate the Lease or abate the rent payable thereunder and agrees that  
3 notwithstanding any provision of the Lease, no notice of termination thereof nor any abatement shall  
4 be effective unless Mortgagee has received the aforesaid notice and has failed to cure the subject  
5 default within the same time period allowed Landlord under the Lease. It is understood that the  
6 abatement provisions of this Section relate to abatements by reason of Landlord's default and do not  
7 apply to provisions of the Lease whereby Tenant has the automatic right to abate rentals such as, for  
8 example, abatement upon casualty or condemnation.

9       6. Neither the Mortgage nor any other security instrument executed in connection  
10 therewith shall encumber or be construed as subjecting in any manner to the lien thereof, any trade  
11 fixtures, signs or other personal property at any time furnished or installed by or for Tenant or its  
12 subtenants or licensees on the aforementioned property regardless of the manner or mode of  
13 attachment thereof.

14       7. Any notices of communications given under this Agreement shall be in writing and  
15 shall be given by registered or certified mail, return receipt requested, or by any recognized overnight  
16 mail carrier, with proof of delivery slip, postage prepaid, (a) if to Mortgagee, at the address of  
17 Mortgagee as hereinabove set forth or at such other address or persons as Mortgagee may designate by  
18 notice in the manner herein set forth, or (b) if to Tenant, at the address of Tenant as hereinabove set  
19 forth, with duplicate copies to Allan N. Rauch, Esq., c/o Bed Bath & Beyond Inc., 650 Liberty  
20 Avenue, Union, New Jersey 07083, and Sills Cummis Epstein & Gross P.C., One Riverfront Plaza,  
21 Newark, New Jersey 07102, Attention: Jeffrey H. Newman, Esq., or such other address or persons as  
22 Tenant may designate by notice in the manner herein set forth. All notices given in accordance with  
23 the provisions of this Section shall be effective upon receipt (or refusal of receipt) at the address of the  
24 addressee.

25       8. This Agreement shall bind and inure to the benefit of and be binding upon and  
26 enforceable by the parties hereto and their respective successors, assigns, and sublessees.

27       9. This Agreement contains the entire agreement between the parties and cannot be  
28 changed, modified, waived or canceled except by an agreement in writing executed by the party  
29 against whom enforcement of such modification, change, waiver or cancellation is sought.

30       10. This Agreement and the covenants herein contained are intended to run with and bind  
31 all lands affected thereby.

32       [**to add if our memorandum of lease has been recorded prior to the subject mortgage**]  
33 NOTE: THIS AGREEMENT BY TENANT SHALL NOT BE EFFECTIVE UNLESS AND UNTIL  
34 ANY PRIOR MORTGAGES ON THIS PROPERTY HAVE BEEN SATISFIED SO THAT  
35 TENANT'S PRIOR AGREEMENTS TO ATTORN TO SAID MORTGAGES AND/OR TO  
36 SUBORDINATE ITS LEASE TO SAID MORTGAGES SHALL HAVE BEEN EXTINGUISHED.

37

Signature page to follow

1

2 IN WITNESS WHEREOF, the parties hereto have duly executed this Subordination, Non-  
3 Disturbance and Attornment Agreement as of the day and year first above written.

4

**MORTGAGEE:**

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: (Assistant) Secretary

[SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: (Vice) President

ATTEST:

BED BATH & BEYOND INC., a New York  
corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: (Assistant) Secretary

[SEAL]

By: \_\_\_\_\_  
Name: Warren Eisenberg  
Title: Co-Chairman

1 [INSERT APPROPRIATE JURAT FOR MORTGAGEE]

2

3

4

5 **[JURAT FOR PARENT:]**

6

7 STATE OF NEW JERSEY )  
8 ) : ss.  
9 COUNTY OF UNION )

10

11 On this \_\_\_ day of \_\_\_\_\_, 200\_\_\_, before me personally came Warren Eisenberg to me  
12 known, who being by me duly sworn, did depose and say that he is the Co-Chairman of Bed Bath &  
13 Beyond Inc., the corporation described in and which executed the above instrument and that he signed  
14 his name thereto by order of the Board of Directors of said corporation.

15

16

Notary Public

17

My Commission Expires:

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1 Exhibit H

2 Form of Recognition Agreement

3 THIS RECOGNITION AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by  
4 and between Lincoln PO Red Oak Village, L.P., a Delaware limited partnership, having an address at  
5 \_\_\_\_\_ ("Landlord"); Bed Bath & Beyond Inc., a New York  
6 corporation, having an address at 650 Liberty Avenue, Union, New Jersey 07083 ("Tenant"); and  
7 \_\_\_\_\_, a [\_\_\_\_\_] [corporation] [limited] [general]  
8 [partnership], having an address at \_\_\_\_\_ ("Subtenant").

9 R E C I T A L S:

10 A. Landlord and Tenant have entered into a certain Lease Agreement (the "Lease") dated  
11 as of \_\_\_\_\_, 200\_\_\_\_, a short form of which has been recorded in \_\_\_\_\_,  
12 which demises certain premises (the "Premises") located in the \_\_\_\_\_ Shopping Center,  
13 [City], [State], which Shopping Center is more particularly described on Exhibit A annexed hereto and  
14 made a part hereof.

15 B. Section 15.5 of the Lease provides that in the event Tenant subleases all or a portion of  
16 the Premises for a term of at least five (5) years, Landlord shall, upon Tenant's request, execute and  
17 deliver a Recognition Agreement among Landlord, Tenant and each such subtenant in the form  
18 attached to the Lease, in recordable form.

19 C. Pursuant to a Sublease dated as of \_\_\_\_\_ (the "Sublease"), Tenant has  
20 subleased [a portion of] the Premises to Subtenant (the "Subleased Premises").

21 D. The parties hereto desire to effectuate the provisions of Section 15.5 of the Lease with  
22 respect to the Sublease and the Subleased Premises.

23 NOW, THEREFORE, in consideration of the mutual covenants and agreements herein  
24 contained, the parties hereto, intending to be legally bound hereby, agree as follows:

25 1. Landlord warrants and represents as follows:

26 (a) that it is the fee owner of the Premises,

27 (b) that the Lease is unmodified (except as may be otherwise set forth in Exhibit B  
28 annexed hereto, if any) and is in full force and effect,

29 (c) that the term of the Lease expires on \_\_\_\_\_, but is subject to [three]  
30 renewal periods of [five] years each and

31 (d) that Tenant is not in default under the Lease nor has any event occurred which  
32 would after notice to Tenant and the passage of time become a default of Tenant under the Lease.

33 2. Landlord hereby acknowledges receipt of a copy of, and consents to and approves, the  
34 Sublease and all of the terms, covenants and provisions thereof, and agrees that the exercise by  
35 Subtenant of any of its rights, remedies and options contained therein shall not constitute a default  
36 under the Lease.

37 3. Landlord agrees that whenever it has an obligation with respect to the Premises, or its  
38 consent or approval is required for any action of Tenant under the Lease, then, to the extent such  
39 obligation, consent or approval relates to the Subleased Premises or Subtenant's use and occupation  
40 thereof, it will perform such obligation in accordance with the terms and conditions of the Lease, and,  
41 subject to the applicable terms of the Lease, will not unreasonably withhold or unduly delay such  
42 consent or approval.

43 4. Landlord shall not, in the exercise of any of the rights arising or which may arise out of  
44 the Lease or of any instrument modifying or amending the same or entered into in substitution or  
45 replacement thereof (whether as a result of Tenant's default or otherwise), disturb or deprive Subtenant  
46 in or of its possession or its rights to possession of the Subleased Premises or of any right or privilege  
47 granted to or inuring to the benefit of Subtenant under the Sublease, provided that Subtenant is not in  
48 default under the Sublease beyond the expiration of any applicable notice and cure period.

1       5.     In the event of the termination of the Lease by reentry, notice, conditional limitation,  
2 surrender, summary proceeding or other action or proceeding, or otherwise, or, if the Lease shall  
3 terminate or expire for any reason before any of the dates provided in the Sublease for the termination  
4 of the initial or renewal terms of the Sublease and if immediately prior to such surrender, termination  
5 or expiration the Sublease shall be in full force and effect, Subtenant shall not be made a party in any  
6 removal or eviction action or proceeding nor shall Subtenant be evicted or removed of its possession or  
7 its right of possession of the Subleased Premises be disturbed or in any way interfered with, and the  
8 Sublease shall continue in full force and effect as a direct lease between Landlord and Subtenant  
9 (provided, that in such event, Subtenant shall, for the then remainder of the term of the Sublease, pay  
10 fixed rent and additional rent in an amount equal to the greater of (x) the Fixed Rent and additional  
11 rent then payable under the Lease, prorated on the basis of the ratio which the Floor Area of the  
12 Subleased Premises bears to the Floor Area of the Premises, or (y) the fixed rent and additional rent  
13 then payable under the Sublease).

14       6.     Landlord hereby waives and relinquishes any and all rights or remedies against  
15 Subtenant, pursuant to any lien, statutory or otherwise that it may have against the property, goods or  
16 chattels of Subtenant in or on the Subleased Premises.

17       7.     Any notices, consents, approvals, submissions, demands or other communications  
18 (hereinafter collectively referred to as "*Notice*") given under this Agreement shall be in writing.  
19 Unless otherwise required by law or governmental regulation, Notices shall be deemed given if sent by  
20 registered or certified mail, return receipt requested, or by any recognized overnight mail carrier, with  
21 proof of delivery slip, postage prepaid (a) to Landlord, at the address of Landlord as hereinabove set  
22 forth or such other address or persons as Landlord may designate by Notice to the other parties hereto,  
23 (b) to Tenant, at the address of Tenant as hereinabove set forth, with duplicate copies to Allan N.  
24 Rauch, Esq., c/o Bed Bath & Beyond Inc., 650 Liberty Avenue, Union, New Jersey 07083, and Sills  
25 Cummis Epstein & Gross P.C., One Riverfront Plaza, Newark, New Jersey 07102, Attention: Jeffrey  
26 H. Newman, Esq., or such other address or persons as Tenant may designate by Notice to the other  
27 parties hereto, and (c) to Subtenant, at the address of Subtenant as hereinabove set forth or such other  
28 address or persons as Subtenant may designate by Notice to the other parties hereto. During the period  
29 of any postal strike or other interference with the mails, personal delivery shall be substitute for  
30 registered or certified mail. All Notices shall become effective only on the receipt or rejection of same  
31 by the proper parties.

32       8.     No modification, amendment, waiver or release of any provision of this Agreement or  
33 of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any  
34 purpose whatsoever unless in writing and duly executed by the party against whom the same is sought  
35 to be asserted.

36

[Signature Page Follows]

1  
2        9. This Agreement shall be binding on and shall inure to the benefit of the parties hereto  
3 and their respective heirs, legal representatives, successors, assigns and sublessees.

4        IN WITNESS WHEREOF, the parties have caused this Recognition Agreement to be executed  
5 under seal the date first above written.

6

**LANDLORD:**

LINCOLN PO RED OAK VILLAGE, L.P.,  
a Delaware limited partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By its general partner, LINCOLN/MFIL  
RED OAK, LTD., a Texas limited  
partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
By its general partner, LINCOLN GP RED  
OAK, INC., a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

BED BATH & BEYOND INC., a New York  
corporation

By: \_\_\_\_\_  
Name: Warren Eisenberg  
Title: Co-Chairman

**SUBTENANT:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1 [INSERT APPROPRIATE JURATS FOR LANDLORD AND SUBTENANT]  
2  
3

4 [JURAT FOR PARENT:]

5 STATE OF NEW JERSEY )  
6 ) : ss.  
7 COUNTY OF UNION )

8  
9 On this \_\_\_ day of \_\_\_\_\_, 200\_\_\_, before me personally came Warren Eisenberg to me  
10 known, who being by me duly sworn, did depose and say that he is the Co-Chairman of Bed Bath &  
11 Beyond Inc., the corporation described in and which executed the above instrument and that he signed  
12 his name thereto by order of the Board of Directors of said corporation.

13 \_\_\_\_\_ Notary Public  
14  
15 My Commission Expires:  
16  
17  
18  
19 \_\_\_\_\_

20 \_\_\_\_\_  
21 \_\_\_\_\_

1

Exhibit I

2

Form of Delivery Date Notice

3

[Letterhead of Landlord]

4

5

, 200

6

7

8

9

[via Federal Express or other  
recognized overnight delivery  
service per Article 18 of the foregoing  
lease]

10 Bed Bath & Beyond [of \_\_\_\_\_] Inc.  
11 650 Liberty Avenue  
12 Union, NJ 07083  
13 Attn: Warren Eisenberg

14 Re: Lease Agreement dated as of \_\_\_\_\_, 200 (the "**Lease**"), between Lincoln PO Red Oak  
15 Village, L.P., as landlord ("**Landlord**"), and Bed Bath & Beyond Inc., as tenant ("**Tenant**"),  
16 with respect to certain retail premises (the "**Premises**") located in the Red Oak Village  
17 Shopping Center, San Marcos, Texas

18 Gentlemen:

19 In accordance with the provisions of Subsection 2.3.2 of the Lease, the Landlord hereby  
20 informs the Tenant that the Delivery Date shall take place at 8:00 A.M. on \_\_\_\_\_, 200.  
21 This notice shall constitute the Delivery Date Notice referred to in Subsection 2.3.2 of the Lease.

22 LINCOLN PO RED OAK VILLAGE, L.P.

23

24

25

By: \_\_\_\_\_, (Vice) President

26

27

28 cc: [Jeffrey H. Newman, Esq.]  
29 [Allan N. Rauch, Esq.]

1

Exhibit J

2

Form of Delivery Date Certification

3

[Letterhead of Landlord]

4

5

[via Federal Express or other  
recognized overnight delivery  
service per Article 18 of the foregoing  
lease]

, 200

10 Bed Bath & Beyond Inc.  
11 650 Liberty Avenue  
12 Union, NJ 07083  
13 Attn: Warren Eisenberg

14 Re: Lease Agreement dated as of \_\_\_\_\_, 200 (the "*Lease*"), between Lincoln PO Red Oak  
15 Village, L.P., as landlord ("*Landlord*"), and Bed Bath & Beyond Inc., as tenant ("*Tenant*"),  
16 with respect to certain retail premises (the "*Premises*") located in the Red Oak Village  
17 Shopping Center, San Marcos, Texas

18 Gentlemen:

19 In accordance with the provisions of Subsection 2.3.3 of the Lease, Landlord hereby certifies to  
20 Tenant that, as of the date of this certification, all of the Delivery Date Conditions (as defined in the  
21 Lease) have been satisfied, and that, as a result, the Delivery Date (as such term is defined in the  
22 Lease) will be deemed to be \_\_\_\_\_, 200 . This notice shall constitute the Delivery Date  
23 Certification referred to in Subsection 2.3.3 of the Lease.

24

LINCOLN PO RED OAK VILLAGE, L.P.

25

26

27

By: \_\_\_\_\_

28

, (Vice) President

29

30 cc: [Jeffrey H. Newman, Esq.]  
31 [Allan N. Rauch, Esq.]

1 Exhibit K-1

2 Existing Exclusives

3 1. PETsMART:

4 (a) Tenant's Exclusive Rights. As used in the Lease, the term "Tenant's Primary  
5 Business" shall mean the retail sale of (i) pets (including, but not limited to, fish, birds, reptiles, dogs,  
6 cats and other small animals), (ii) food, accessories and other products relating to pets and animals,  
7 including equestrian products and apparel related thereto, (iii) services related to pets and animals,  
8 such as grooming, boarding, animal training and obedience classes, pet adoption and veterinary  
9 services, (iv) products relating to nature and the environment, and (v) educational products and  
10 services relating to any of the foregoing, and office and storage uses incidental to the foregoing. From  
11 and after the date hereof and continuing throughout the Term of the Lease, to the extent permitted  
12 under applicable law, Tenant shall have the exclusive right in the Shopping Center to conduct any  
13 portion of Tenant's Primary Business described in clauses (i), (ii) and (iii) of this Section 2. Subject to  
14 the limitation set forth below, all other tenants or other occupants of any portion of the Shopping  
15 Center shall be prohibited from engaging in any portion of such Primary Business described in clauses  
16 (i), (ii) and (iii) of this Section 2, except on a basis which is incidental to an otherwise permitted use.  
17 For purposes of this Section 2, the term "incidental" shall mean that the use occupies the lesser of (a)  
18 one thousand (1,000) square feet of Gross Floor area, or (b) five percent (5%) of the sales area in the  
19 subject premises.

20 (b) Prohibited Uses. The following uses (collectively referred to as "Prohibited  
21 Uses" and individually as a "Prohibited Use") are prohibited during the Term of the Lease in any  
22 portion of the Shopping Center: nuisance; any use causing loud noises or offensive odors (including  
23 any business using exterior loud speakers); manufacturing facility; dry cleaner (except facilities for  
24 drop off and pick up of clothing cleaned at another location); any facility for the sale, lease or rental of  
25 automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles; automobile repair shop  
26 or service station or any facility storing or selling gasoline or diesel fuel in or from tanks; used clothing  
27 or thrift store or liquidation outlet; massage parlor; adult book shop or adult movie house; mortuary or  
28 funeral parlor; coin operated laundry; cocktail lounge, bar or tavern or sale of alcoholic beverages,  
29 whether or not packaged, except in conjunction with a restaurant permitted hereunder; night club;  
30 cinema or theater; place of recreation including, but not limited to, bowling alley, skating rink,  
31 carnival, game arcade or health spa (except that either a yoga studio or a salon, such as an Elizabeth  
32 Arden's Red Door Spa, shall be allowed, so long as there is only one of the two, and it is limited in size  
33 to not more than five thousand (5,000) square feet); health club, unless located in excess of 500 feet  
34 from Tenant's front door; church; or any other use inconsistent with the operation of a high quality  
35 retail shopping center. Not more than ten thousand (10,000) square feet of space in the Shopping  
36 Center in the aggregate shall be used for retail service offices, medical or professional offices, or other  
37 office purposes except office use incidental to retail uses. In addition, the following uses must first be  
38 approved in writing by Tenant: drive-throughs; children's recreational, educational or day-care facility;  
39 restaurants occupying more than two thousand five hundred (2,500) square feet of Gross Floor Area;  
40 provided, however, the following restaurants are permitted, (i) restaurants without limit as to size on  
41 outparcels so long as they are self-parked on their respective outparcel, (ii) small restaurants and coffee  
42 shops incidental to a retailer's permitted use, and (iii) restaurants within 300 feet from Tenant's  
43 Premises; provided there may be only two such restaurants, each of which does not exceed 2000  
44 square feet and provided, further, no restaurant shall be permitted in the 2,800 square foot building  
45 adjacent to the Premises; offices and professional uses if the aggregate Gross Floor Area exceeds  
46 10,000 square feet and more than 3,000 square feet are located within 300 feet of the Premises; schools  
47 of any nature except in conjunction with animal training or obedience training classes associated with  
48 Tenant's Primary Business. As used herein, "school" includes, but is not limited to, a beauty school,  
49 barber college, reading room, place of instruction or any other operation serving primarily students or  
50 trainees rather than retail customers. It is the intent of this Section that the Shopping Center shall be  
51 devoted to high quality retail uses and that the parking and the other common facilities shall not be  
52 burdened by either excessive or protracted use.

53 2. Marshalls:

54 (a) Landlord agrees that, from the date hereof until expiration of the term of this  
55 lease, no other premises in the Shopping Center shall at any time contain more than twenty five  
56 thousand (25,000) square feet of floor area therein used or occupied for, or devoted to, the sale or  
57 display of off-price apparel and related accessories (the merchandise referred to above is herein  
58 referred to as the "Protected Merchandise"). The computation of such floor area shall include on half

1 (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks,  
2 gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or  
3 display of the Protected Merchandise. The foregoing uses described in this Paragraph 4(B) are  
4 hereinafter collectively referred to as a "Competing Use." .

5 (b) Landlord agrees that Landlord's Parcel shall not be used (a) for any non-retail  
6 purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, not  
7 being deemed non-retail), or (b) for any entertainment purposes such as a bowling alley, skating rink,  
8 cinema, bar, nightclub, discotheque, amusement gallery, poolroom, health club, massage parlor,  
9 sporting event, sports or game facility, off-track betting club (c) or for any establishment which sells or  
10 displays pornographic materials or (d) for any establishment which sells or displays used merchandise  
11 or second hand goods. No restaurants or establishments selling food prepared on premises for  
12 consumption on or off premises shall be located in Landlord's Parcel within 200 linear feet of the  
13 closest demising wall of the Demised Premises. Anything in this paragraph 4(A) to the contrary  
14 notwithstanding, Landlord and Tenant hereby agree as follows: professional offices which offer  
15 services to the general public and which are normally found in first class shopping centers such as  
16 dentists, accountants, lawyers, doctors, real estate and stock brokerage offices ("Professional Offices")  
17 and service oriented office uses which are normally found in first class shopping centers such as travel  
18 agencies, insurance agencies, weight loss clinics and financial institutions ("Service Oriented Uses")  
19 shall be permitted within the buildings labeled as Retail 1 and Retail 2 on the Lease Plan, provided that  
20 such Professional Offices and Service Oriented Uses shall not exceed 10,000 square feet in the  
21 aggregate. (Collectively the uses described herein are referred to as the "Prohibited Uses").

1

Exhibit K-2

2

Existing Leases

3

4 1. Lease, dated August 5, 2005, between Landlord, as landlord, and PETsMART, Inc., as tenant;  
5 and

6 2. Lease, dated July 21, 2005, between Landlord, as landlord, and Marmaxx Operating Corp., as  
7 tenant.

1

Exhibit L

2

Alternate Rent

3       1. During the applicable period(s) described within Sections 2.4 and/or 2.5 and/or Article  
4 22 of the Lease, Tenant shall pay as "*Alternate Rent*" an amount equal to three (3%) percent of all  
5 "Gross Sales" (hereinafter defined) resulting from business conducted in, on or from the Premises, not  
6 to exceed fifty percent (50%) of the amount of Fixed Rent which otherwise would have been payable  
7 during such period (the "*Cap*").

8       2. As used herein, the term "*Gross Sales*" shall mean the total amount of all sales of  
9 merchandise or services completed at the Premises by Tenant or any sublessee, licensee or  
10 concessionaire of Tenant and any other person or entity operating in the Premises (for purposes of this  
11 Paragraph 2 only, collectively, "*Tenant*"), whether for cash, credit or otherwise, including redemption  
12 of gift certificates and gift cards (regardless of where or how such gift certificates and gift cards were  
13 purchased). Tenant shall record, at the time of each Gross Sale, all receipts from such sale, whether for  
14 cash, credit or otherwise, in a cash register or cash registers, or in such electronic or computer device  
15 which records sales in a manner which is generally acceptable by industry standards. The term "*Gross  
16 Sales*" shall exclude: (1)proceeds from any sales tax, gross receipts tax or similar tax, by whatever  
17 name called, which are separately stated and are in addition to the sales price, (2) bona fide transfers or  
18 exchanges of merchandise from the Premises to any other stores or warehouses of Tenant or any  
19 Affiliates of Tenant, and returns to shippers and manufacturers for credit, (3) refunds or credits given  
20 to customers for merchandise returned or exchanged at the Premises (regardless of where or how  
21 purchased), (4) sales of Tenant's fixtures and equipment not in the ordinary course of Tenant's  
22 business, (5) to the extent of prior inclusion in Gross Sales, bad debts when written off the books of  
23 Tenant, provided that any collections made on account of such bad debts shall be included in Gross  
24 Sales when received, (6) receipts from vending machines installed solely for the use of Tenant's  
25 employees and receipts from pay telephones, (7) sales to employees of Tenant at discount [which, for  
26 the purposes of determining Alternate Rent hereunder, shall not exceed two percent (2%) of Gross  
27 Sales per calendar year or pro rata portion thereof, as applicable], (8) fees paid to independent third  
28 party credit card, charge card, and debit card companies in connection with sales charged to or debited  
29 from customers' credit cards, charge cards, or debit cards, as applicable, (9) proceeds from delivery,  
30 gift-wrapping and check cashing charges [which, for the purposes of determining Alternate Rent  
31 hereunder, shall not exceed two percent (2%) of Gross Sales per calendar year or pro rata portion  
32 thereof, as applicable], (10) sums and credits received in settlement of claims for loss or damage to  
33 merchandise, (11) separately stated service, finance and interest charges, (12) the dollar value of  
34 coupons utilized by customers in the purchase of merchandise from the Premises, (13)close-out or bulk  
35 sales of inventory to jobbers or wholesalers, (14) sales of gift certificates or gift cards, and (15)  
36 forfeited deposits.

37       3. Alternate Rent shall be payable within thirty (30) days after the end of the calendar  
38 month to which it pertains. If the Alternate Rent for a calendar month does not exceed the Cap, such  
39 payment shall be accompanied by a statement prepared by an officer of Tenant setting forth the amount  
40 of Gross Sales achieved during, and the amount of Alternate Rent payable for, such month.

41       4. Tenant shall maintain at the Premises or at its principal office, complete books and  
42 records reflecting all elements of Gross Sales. Tenant shall be permitted to maintain its books and  
43 records in a computerized form; provided, however, that (A) such computerized books and records  
44 provide the same level of information as the books and records described above and are retained for  
45 the full record retention period provided for herein, and (B) promptly upon request, printed copies of  
46 any such books and records shall be made available at Tenant's principal office for inspection by  
47 Landlord's representatives who are engaged in inspecting and/or auditing Tenant's books and records  
48 as provided herein. Such books and records shall be kept in accordance with generally accepted  
49 accounting principles and practices consistently applied and shall be retained by Tenant for not less  
50 than one (1) year following the end of the calendar year to which they refer.

51       5. Provided that the Alternate Rent payable for a calendar month does not exceed the Cap,  
52 Landlord and/or its auditor shall have the right, upon at least ten (10) days prior notice to Tenant, to  
53 inspect and/or audit Tenant's records relating solely to Gross Sales achieved in the Premises for such  
54 calendar month.

55       6. Landlord shall not disclose to any third party Tenant's Gross Sales or the amount of  
56 Alternate Rent paid or payable by Tenant, provided, however, that (A) such information was not  
57 previously disclosed by Tenant to such third party or to the public generally, and (B) nothing contained  
58 herein shall restrict Landlord from disclosing such information as may be required by law, or to its

1 accountants, attorneys, bona fide prospective purchasers, or current or prospective Mortgagees or  
2 Ground Lessor(s) of all or any portion of Landlord's interest in the Shopping Center (provided that  
3 each of such recipients shall be bound to the same non-disclosure provisions as are imposed upon  
4 Landlord).

1

Exhibit M

2

Prohibited Uses

3 As used in this Lease, the term "**Prohibited Uses**" shall mean any of the following uses:

4       1. Any use which emits or results in strong, unusual or offensive odors, fumes, dust or  
5 vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to  
6 intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in  
7 whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse;

8       2. Any operation primarily used as a storage facility and any assembling, manufacturing,  
9 distilling, refining, smelting, agricultural, or mining operation;

10       3. Any "second hand" store, "surplus" store;

11       4. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that  
12 this provision shall not prohibit the temporary use of construction trailers during periods of  
13 construction, reconstruction, or maintenance);

14       5. Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash  
15 compactors or trash containers located near the rear of any building);

16       6. Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house  
17 operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;

18       7. Any central laundry, dry cleaning plant, or laundromat (except that a dry cleaner that  
19 performs all dry cleaning outside the Shopping Center shall be permitted, so long as its on-site  
20 premises are located more than 150 feet away from the Premises);

21       8. Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or  
22 body shop repair operation;

23       9. Any bowling alley or skating rink;

24       10. Any live performance theater, auditorium, meeting hall, sporting event, or other  
25 entertainment use (except that either [but not both] a Dave and Busters or a Studio Grill shall be  
26 permitted as long as same are operated in a manner substantially similar to the manner in which same  
27 are operated as of the Effective Date [the "**Permitted Entertainment Facility**"] and provided that such  
28 Permitted Entertainment Facility is not located in the in-line space that is located from the premises  
29 designated as "Best Buy" on Exhibit B hereto through the premises designated as "Marshalls" on  
30 Exhibit B hereto, inclusive (the "**Restricted Area**");

31       11. Any living quarters, sleeping apartments, or lodging rooms;

32       12. Any veterinary hospital or animal raising or boarding facilities, except than an animal  
33 boarding facility shall be permitted provided that such facility is incidental to a full-line pet and pet  
34 supply store operating in at least 15,000 square feet of Floor Area and located at least 200 feet away  
35 from the Premises (except that a full-line pet and pet supply store shall be permitted to be located  
36 within the Premises subject to any Existing Exclusives); such occupant shall use reasonable efforts to  
37 prevent its customers from allowing their pets to urinate or defecate in the Common Areas and will  
38 promptly remove any "dog dirt" from the Common Areas;

39       13. Any mortuary or funeral home;

40       14. Any "Pornographic Use", which shall include, without limitation: (x) a store displaying  
41 for sale or exhibition books, magazines or other publications containing any combination of  
42 photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational  
43 [provided, however, that the sale of books, magazines and other publications by a national bookstore of  
44 the type normally located in first-class shopping centers in the State in which the Shopping Center is  
45 located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not  
46 be deemed a "pornographic use" hereunder]; or (y) a store offering for exhibition, sale or rental video  
47 cassettes or other medium capable of projecting, transmitting or reproducing, independently or in  
48 conjunction with another device, machine or equipment, an image or series of images, the content of  
49 which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating  
50 Association, or any successor thereto [provided, however, that the sale or rental of such videos by a

1 national video store of the type normally located in first-class shopping centers in the State in which  
2 the Shopping Center is located (such as, for example, Blockbuster or West Coast Video, as said stores  
3 currently operate) shall not be deemed a "pornographic use" hereunder]; or massage parlor [except for  
4 therapeutic massages given in connection with the operation of a day spa or health club which may  
5 otherwise be permitted under this Exhibit M];

6 15. Any so-called "head shop", or other establishment primarily selling or exhibiting drug-  
7 related paraphernalia;

8 16. Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-  
9 premises consumption, except that the sale of alcoholic beverages for on-premises consumption shall  
10 be permitted as an incidental part of an otherwise permitted restaurant or in the Permitted  
11 Entertainment Facility provided that, on an annual basis, not more than fifty percent (50%) of the gross  
12 sales of such restaurant or Permitted Entertainment Facility are derived from the sale of alcoholic  
13 beverages, and provided further that (x) the lease or other occupancy agreement with such restaurant or  
14 Permitted Entertainment Facility obligates such tenant or occupant to provide Landlord with an annual  
15 certification as to the percentage of total gross sales of such tenant or occupant that are derived from  
16 the sale of alcoholic beverages, (y) such lease permits Landlord to forward to Tenant copies of such  
17 annual certifications, and (z) Landlord in fact sends such certification to Tenant each year and each  
18 such certification provides that not more than fifty percent (50%) of such tenant's or occupant's sales  
19 are derived from the sale of alcoholic beverages;

20 17. Any catering or banquet hall;

21 18. Any flea market, amusement or video arcade, pool or billiard hall, night club,  
22 discotheque, or dance hall (except that a Permitted Entertainment Facility shall be permitted);

23 19. Any training or education facility, including but not limited to: beauty schools, barber  
24 colleges, reading rooms, places of instruction or other operations catering primarily to students or  
25 trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site  
26 employee training by an Occupant incidental to the conduct of its business at the Shopping Center;

27 20. Any gambling facility or operation, including but not limited to: off-track or sports  
28 betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno  
29 machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not  
30 apply to governmental sponsored gambling activities (including the incidental sale of lottery tickets in  
31 an otherwise permitted store), or charitable gambling activities, so long as such governmental and/or  
32 charitable activities are incidental to the business operation being conducted by the Occupant;

33 21. Any unlawful use;

34 22. Any pawn shop, gun shop, or tattoo parlor;

35 23. Any church or other place of religious worship;

36 24. Any car wash, automobile repair shop, or any business servicing motor vehicles in any  
37 respect, including, without limitation, any quick lube oil change service, tire center or gasoline or  
38 service station or facility

39 25. Any carnival, amusement park or circus;

40 26. Any medical clinics or medical offices, except that one (1) eyecare center, such as  
41 Lenscrafters or Pearle Vision, which contains an optometrist office as an incidental part of such retail  
42 store, shall be permitted provided that the Floor Area of such eyecare center does not exceed ten  
43 thousand (10,000) square feet;

44 27. Any supermarket (except that an upscale, boutique-type food store shall be permitted to  
45 be located within the Premises);

46 28. Any office use, other than: (x) office space used in connection with and ancillary to a  
47 permitted retail use hereunder; and (y) retail offices providing services commonly found in similar  
48 first-class shopping centers in the San Marcos, Texas metropolitan area (for example, financial  
49 services, real estate brokerage, insurance agency, banking, travel agency), provided that such uses are  
50 located at least 200 feet away from the Premises, and not more than seven thousand five hundred

1 (7,500) square feet of Floor Area in the Shopping Center, in the aggregate, shall be devoted to such  
2 uses;

3 29. hotel/motel;

4 30. daycare center;

5 31. veterinary office, except as may be incidental to a full-line pet and pet supply store  
6 operating in at least 15,000 square feet of Floor Area and located at least 200 feet away from the  
7 Premises (except that a full-line pet and pet supply store shall be permitted to be located within the  
8 Premises subject to any Existing Exclusives); such occupant shall use reasonable efforts to prevent its  
9 customers from allowing their pets to urinate or defecate in the Common Areas and will promptly  
10 remove any "dog dirt" from the Common Areas;

11 32. children's entertainment or activity facility (such as "Discovery Zone", or "Chuck E.  
12 Cheese's");

13 33. karate center;

14 34. movie theater;

15 35. restaurant serving meals for on- or off-premises consumption, except that restaurants  
16 shall be permitted if they are of the type typically found in similar first-class shopping centers in the  
17 San Marcos, Texas metropolitan area, and provided such use is not located in the Restricted Area;

18 36. beauty parlor or nail salon, except that same shall be permitted provided such use is  
19 located at least 150 feet away from the Premises;

20 37. health spa, day spa, health club, exercise facility or similar type business, except that  
21 one (1) day spa occupying not more than 5,000 square feet of Floor Area shall be permitted provided  
22 such use is not located in the Restricted Area.

1

Exhibit N

2

Marshall's Agreement



Beyond any store of its kind.®

Corporate Office  
650 Liberty Avenue  
Union, NJ 07083  
908/688-0888

July 18, 2005

Marmaxx Operating Corp.  
770 Cochituate Road  
Framingham, MA 07101

RE: Red Oak Village Shopping Center –  
San Marcos, TX (the "Shopping Center")

Ladies and Gentlemen:

Reference is made to the Shopping Center, for which Marmaxx Operating Corp. ("MARMAXX"), and Bed Bath & Beyond Inc. ("BBB") are each either negotiating or have executed a lease for their respective retail premises. Notwithstanding the "exclusive use" provisions contained or to be contained in the respective leases of premises to BBB (the "BBB Lease") or MARMAXX (the "MARMAXX Lease"), BBB and MARMAXX hereby agree that only the following restrictions shall apply with respect to their respective premises so long as both the BBB Lease and the MARMAXX Lease remain in effect:

1. Neither MARMAXX, nor any assignee(s) of the MARMAXX Lease, nor any sublessee(s) of all or any portion of the premises demised to MARMAXX pursuant to the MARMAXX Lease (the "MARMAXX Premises") shall use the MARMAXX Premises primarily as either (1) a home furnishings/linens/domestics store of the type currently operated by Bed Bath & Beyond, Linens 'N Things, HomePlace, J.C. Penney Home Store, HomeGoods or Strouds, or (2) a full-line linens/domestics store (e.g., selling sheets, bedspreads, comforters, duvets, pillows, pillow covers, chair pads, placemats, tablecloths, dish towels, etc.). For illustration purposes only, the restriction described above in this paragraph would not prevent the operation of the respective stores known as Pier One, Mikasa, Williams Sonoma, Container Store or Hold Everything, as same currently operate.

2. Neither BBB, nor any assignee(s) of the BBB Lease, nor any sublessee(s) of all or any portion of the premises demised to BBB under the BBB Lease (the "BBB Premises") shall use, occupy, or devote more than 25,000 square feet of floor area in the BBB Premises for the sale or display of off-price apparel and related accessories (the merchandise referred to above is herein referred to as the "*Protected Merchandise*"). The computation of such floor area shall include on half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas,

Marmaxx Operating Corp.  
July 18, 2005  
Page 2

shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of the Protected Merchandise.

3. (a) Notwithstanding anything contained herein, the provisions of this agreement for the benefit of BBB shall be of no further force or effect (and the respective "exclusive use" provisions contained (or to be contained) in the BBB Lease shall no longer apply) from and after the cessation of use of the BBB Premises as a store operating primarily as either a home furnishings/linens/domestics store or a full-line linens/domestics store, for a period of nine (9) consecutive months (which cessation is not attributable to such periods of time which (1) result from alterations or renovations being performed in and to the BBB Premises, or (2) are caused by damage or destruction, eminent domain proceedings or actions, or events of force majeure).

(b) Notwithstanding anything contained herein, the provisions of this agreement for the benefit of MARMAXX shall be of no further force or effect (and the respective "exclusive use" provisions contained (or to be contained) in the MARMAXX Lease shall no longer apply) from and after the cessation of use of the MARMAXX Premises as a store operating primarily as an apparel store, for a period of nine (9) consecutive months (which cessation is not attributable to such periods of time which (1) result from alterations or renovations being performed in and to the MARMAXX Premises, or (2) are caused by damage or destruction, eminent domain proceedings or actions, or events of force majeure).

4. For purposes of this agreement, the term "primarily" shall mean more than forty percent (40%) of the gross building square footage of the applicable premises, as such premises may be relocated, expanded or decreased in size within the Shopping Center from time to time after the premises is initially opened at the size indicated Paragraph 5 below.

5.(a) Notwithstanding anything contained herein, the MARMAXX Premises, as of the date the tenant in the MARMAXX Premises initially opens for business, shall not exceed 31,000 square feet.

(b) Notwithstanding anything contained herein, the BBB Premises, as of the date the tenant in the BBB Premises initially opens for business, shall not exceed 25,300 square feet.

Please sign both of the enclosed counterparts of this agreement and return to the undersigned one fully-executed counterpart of this agreement to confirm your acceptance of and agreement to the foregoing. It shall be a condition precedent to the agreements herein set forth that BBB and MARMAXX each shall have entered into a lease or occupancy agreement for its premises in the Shopping Center within one year after the date hereof.

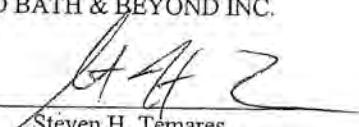
Marmaxx Operating Corp.  
July 18, 2005  
Page 3

Thank you for your time and cooperation.

Very truly yours,

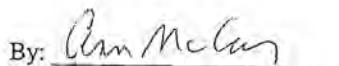
BED BATH & BEYOND INC.

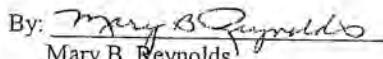
By:

  
Steven H. Temares  
President – Chief Executive Officer

  
M.R.  
S.D.G.

Confirmed and agreed:  
MARMAXX OPERATING CORP.

By:   
Ann McCauley  
Secretary/Clerk

By:   
Mary B. Reynolds  
Vice President/Treasurer

1

Exhibit O

2

Sam's OEA

3

**EXHIBIT O TO PURCHASE AGREEMENT**

When recorded return to:  
Mayer Brown Rowe & Maw LLP  
700 Louisiana, Suite 3600  
Houston, Texas 77002  
Attention: Robert L. Morgan

TEXAS - San Marcos  
Store #95714 (Sam's Club)

**EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND ("ECR")**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, between  
**SAM'S REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust ("Sam's Club"), and  
**TEXAS REALTY RETAIL PARTNERS, INC.**, a Texas corporation ("Developer").

**WITNESSETH:**

**WHEREAS**, Sam's Club is the owner of the Sam's Club Tract as shown on the site plan  
attached hereto as Exhibit A-1 hereof, said Tract being more particularly described in Exhibit B  
attached hereto;

**WHEREAS**, Developer is the owner of the Developer Tract and the Outparcels shown  
on the site plan attached hereto as Exhibit A-1 hereof, the same being more particularly  
described in Exhibit C hereof, and

**WHEREAS**, Sam's Club and Developer desire that the Sam's Club Tract, the Developer  
Tract and the Outparcels be developed in conjunction with each other pursuant to a general plan  
of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the  
"Shopping Center"), and further desire that the Shopping Center be subject to the easements and  
the covenants, conditions and restrictions hereinafter set forth;

**NOW, THEREFORE**, for and in consideration of the premises, easements, covenants,  
conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby  
acknowledged, Sam's Club and Developer do hereby agree as follows:

1. Building/Common Areas

- 1.1 "Building Areas" as used herein shall mean those portions of the Shopping Center  
shown on Exhibit A-2 as "Building Area" (and "Future Building Area" and  
"Future Expansion Area"). Canopies may encroach from the Building Areas over  
the Common Areas provided the canopies do not interfere with the use of the  
Common Areas.
- 1.2 "Common Areas" shall be all of the Shopping Center except the Building Areas.

- 1.3 "Tracts" as used herein shall mean the Sam's Club Tract and the Developer Tract but not the Outparcels. Reference to a "Tract" refers to the Sam's Club Tract or the Developer Tract but not the Outparcels.
- 1.4 **Conversion to Common Areas:** Those portions of the Building Areas which are not from time to time used or cannot, under the terms of this Agreement, be used for buildings shall become part of the Common Area for the uses permitted hereunder for so long as such areas are not or cannot be used, under the terms of this Agreement, for buildings, and shall be improved, kept and maintained as provided herein.

2. **Use.** Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, and retail stores. No cafeteria, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, or any business serving alcoholic beverages (other than on-premises consumption in connection with the operation of a restaurant, which shall be permitted so long as the total annual sales from alcoholic beverages for any such restaurant do not exceed 50% of the total annual sales of such restaurant) shall occupy space within the Shopping Center without the prior written consent of Sam's Club. No restaurant shall occupy space on any portion of the Developer Tract or the Outparcels situated within three hundred (300) feet of the front wall of the building on the Sam's Club Tract without the prior written consent of Sam's Club. Developer recognizes that said businesses may inconvenience Sam's Club's customers and adversely affect Sam's Club's business. Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Sam's Club on the Sam's Club Tract. Developer recognizes and agrees that Sam's Club may, at Sam's Club's sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Sam's Club Tract; and Developer hereby waives any legal action for damages or for equitable relief which might be available to Developer because of such cessation of business activity by Sam's Club.

3. **Competing Business.** Developer covenants that as long as Sam's Club, or any affiliate of Sam's Club, is the user of the Sam's Club Tract, either as owner or lessee, no space in or portion of the Developer Tract or the Outparcels, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as (i) a facility dispensing gasoline or other fuels from pumps, and/or a facility engaged in the business of quick lube/oil changes, (ii) a membership warehouse club, (iii) a pharmacy, (iv) a discount department store or other discount store, as such terms are defined below, (v) a variety, general or "dollar" store, (vi) a grocery store or supermarket as such terms are defined below, or (vii) as any combination of the foregoing uses. In the event of a breach of this covenant, Sam's Club shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of building space used for the purpose of selling food for off premises consumption, which shall include but not be limited to the sale of dry, refrigerated or frozen

groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments. "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of building space used for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of a Wal-Mart store or a Wal-Mart SuperCenter store (but the following stores as currently operated shall not be considered "discount department stores": Belk, Dillard's, Mervyn's, Kohl's, J.C. Penney and Sears).

4. Buildings.

- 4.1 Design and Construction. The Buildings constructed on the Shopping Center shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract or Outparcel onto another Tract or Outparcel except as provided for in Subsection 4.4. below. The design and construction shall be of high quality. No improvements shall be constructed, erected or expanded or altered on the Outparcels until the plans for the same (including site layout, exterior building materials and colors and parking) have been approved in writing by Developer. No building constructed on the Sam's Club Tract or the Developer Tract shall exceed 42' (including all mechanical improvements and architectural embellishments) in height above finished grade. No building constructed on the Outparcels shall exceed 24' (including all mechanical improvements and architectural embellishments) in height, as measured from the mean finished elevation of the parking area of the Shopping Center; provided, however, that architectural embellishments to a building, not extending for more than ten percent (10%) of the length of the front of such building, may extend up to a height of 28', as measured from the mean finished elevation of the parking area of the Shopping Center. No building shall have a metal exterior.
- 4.2 Location/Size. No building shall be constructed on the Shopping Center (as either immediate development or future expansion) except within the Building Areas. Any rooftop equipment constructed on the buildings located on the Outparcels shall be screened in a manner satisfactory to the Developer.
- 4.3 Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.
- 4.4 Easements. In the event building wall footings encroach from one Tract onto the other Tract, despite efforts to avoid that occurrence, the party onto whose Tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

5. Common Areas.

5.1 Grant of Easements. Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around the Sam's Club Tract and the Developer Tract for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas located on the Sam's Club Tract and the Developer Tract. Sam's Club and Developer hereby grant for the benefit of the Outparcels, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Sam's Club Tract and the Developer Tract; provided, however, in no event shall the owner, occupant, licensee or invitee of any of the Outparcels(s) be permitted to use the Sam's Club Tract or the Developer Tract for vehicular parking or for any other purpose other than as described above. Developer hereby grants to Sam's Club for the benefit of the Sam's Club Tract, nonexclusive easements for vehicular and pedestrian access, ingress, and egress over and across the Outparcels; provided however, in no event shall the owner, occupancy, licensee or invitee of the Sam's Club Tract be permitted to use the Outparcels for vehicular parking or for any other purpose other than as permitted pursuant to the terms of this Agreement.

5.2 Limitations on Use.

- (1) Customers. Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business in the Shopping Center.
- (2) Employees. Each party shall use reasonable efforts to ensure that employees park on the Common Areas of said party's Tract or Outparcel.
- (3) General. Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. The use by Sam's Club of the Common Areas on the Sam's Club Tract for the display, sale and storage of merchandise and for the use of seasonal sales structures is expressly permitted. The use by Developer of that portion of the Common Areas of the Developer Tract labelled on Exhibit A-2 to this Agreement as "Developer's Outdoor Sales Area" for the display, sale and storage of merchandise and for the use of seasonal sale structures is expressly permitted. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

5.3 **Utility and Service Easements.** Each party, as grantor, hereby establishes and grants a nonexclusive easement for the benefit of the owner of each Tract or Outparcel, on, across and under the Common Areas, to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Shopping Center, now upon or hereafter installed on, across or under the Common Areas, to the extent necessary to service such Tract or Outparcel. Both parties shall use their commercially reasonable efforts to cause the installation of such utility and service lines prior to paving of the Common Areas. No such lines, sewers, utilities or services of one party shall be installed within the Building Areas on the other party's parcel. The location of any utilities hereafter installed shall be determined by the owner of the Tract or Outparcel (the location of utilities on the Sam's Club Tract shall be determined by Sam's Club as long as it is the owner of the Sam's Club Tract) upon which such utilities are to be installed. Any such installed utility services may be relocated by the owner of a Tract or Outparcel on such owner's Tract or Outparcel, subject to compliance with applicable laws, at the expense of the owner of that Tract or Outparcel, provided that such relocation shall not interfere with, increase the cost of, or diminish utility services to any other Tract or Outparcel and, further provided, that no utilities shall be relocated on the Sam's Club Tract without the prior written consent of Sam's Club as long as it is the owner of or lessee of the Sam's Club Tract.

5.4 **Water Flow.** Each party, as grantor, hereby establishes and grants a nonexclusive easement for the benefit of the owner of each Tract or Outparcel to use, maintain and repair any storm water drainage system (the "Storm Drainage System") now or hereafter located on either Tract or any Outparcel, together with the right to discharge surface water runoff across portions of either Tract or any Outparcel in accordance with the design of the Storm Drainage System. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on Exhibit A-2 (including without limitation building and building expansion, curbs, drives and paving) shall be permitted.

6. **Development, Parking Ratios, Maintenance, and Taxes.**

6.1 **Development.** The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.

6.2 **Sam's Club Tract and Developer Tract "Parking Ratio".** Developer hereby agrees that at all times there shall be independently maintained on the Developer Tract parking area sufficient to accommodate not fewer than 5.0 car spaces for each 1,000 square feet of building or buildings on such Tract. Sam's Club hereby agrees that at all times there shall be independently maintained on the Sam's Club Tract parking area sufficient to accommodate not fewer than 4.5 car spaces for each 1,000 square feet of building or buildings on such Tract.

6.3 **Outparcel "Parking Ratio"**. Developer agrees that at all times there shall be independently maintained on each Outparcel parking area sufficient to accommodate not fewer than: (i) 15 spaces for every 1,000 square feet of building space for any restaurant or entertainment use in excess of 5,000 square feet, (the same ratio shall be provided for a McDonald's Restaurant, notwithstanding a building footprint of less than 5,000 square feet); or (ii) 10 spaces for every 1,000 square feet of building space for any restaurant or entertainment use less than 5,000 square feet (subject to the exception above); or (iii) 5.5 spaces per 1,000 square feet of building space for any other use.

6.4 **Maintenance**.

- (1) **Standards**. The Outparcels shall be kept neat, orderly, planted in grass and trimmed until improved and constructed. Following completion of the improvements on the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limitation, the following:
  - (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
  - (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
  - (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
  - (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
  - (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
  - (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and
  - (g) Maintaining elements of the Storm Drainage System.
- (2) **Expenses**. The respective owners shall pay the maintenance expense of their Tracts or Outparcels.
- (3) **By Agent**. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common

Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

6.5 **Taxes.** Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

7. **Signs.** No rooftop sign shall be erected on the building constructed on the Outparcels. No freestanding identification sign may be erected on the Outparcels without approval of the Developer, and in no event shall such freestanding identification sign exceed the height of the shopping center pylon sign or block the visibility of the Sam's Club Store. Notwithstanding the foregoing, there may be erected entrance-exit signs to facilitate the free flow of traffic, which entrance-exit signs shall be of a monument type, not to exceed 3'3" in height, the type and location of such signs to be approved by Developer. No sign shall be located on the Common Areas on the Sam's Club Tract and the Developer Tract except signs advertising businesses conducted thereon, of which, there shall be no more than 2 free-standing identification signs on the Common Areas on the Sam's Club Tract and 3 free-standing identification signs on the Common Areas on the Developer Tract (which free-standing identification signs may be multi-tenant pylon or monument signs). The owner of the Sam's Club Tract shall have the right to maintain sign panels in the top panel position on each side of each of the pylon or monument signs maintained by Developer on the Developer Tract (only the name of the shopping center may be above the Sam's Club panel position), which sign panels for the owner of the Sam's Club Tract shall be at least twice as large (in total square footage) as any of the other sign panels available to any other sign panel owner or user on each such pylon or monument sign on the Developer Tract (determined separately with respect to each such pylon or monument sign). No signs shall obstruct the ingress and egress shown on Exhibit A-2. [NOTE: IF SAM'S CLUB IS ALLOWED AN "OFF PREMISES" SIGN BY THE CITY, IT WILL BE ALLOWED TO HAVE A SINGLE USER PYLON SIGN ON THE DEVELOPER TRACT ALONG THE I-35 FRONTAGE AND THIS SECTION WILL BE REVISED.]

8. **Indemnification/Insurance.**

8.1 **Indemnification.** Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract or Outparcel, except if caused by the act or negligence of the other party hereto.

8.2 **Insurance.**

(1) Each owner of any portion of the Shopping Center shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against

the Sam's Club Tract or Developer so long as it or any affiliate has an interest as owner or lessee of the Developer Tract, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. Notwithstanding the foregoing, all of the record owners of an Outparcel shall be entitled to take any action permitted by this Agreement with respect to the breach of Sections 5.1, 6.1, 8.1, 8.2(4) and 9.

13. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

14. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Developer and Sam's Club there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Sam's Club as long as it or its affiliate has any interest as either owner or Lessee of the Sam's Club Tract, or its successors in interest, and (b) Developer, as long as it or its affiliate has any interest as either owner or Lessor of the Developer Tract, or its successors in interest.

15. Non-Merger. So long as Sam's Club or its affiliate is owner or lessee of the Sam's Club Tract, this Agreement shall not be subject to the doctrine of merger.

16. Duration. Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

17. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

19. Transfer of Interests; Notices.

19.1 **Transfer of Interests.** In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any tract subject to this Agreement, or any portion thereof, the Acquiring Party shall execute and file in the land records of Hays County, Texas, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this Agreement may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice

Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this Agreement, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Hays County, Texas (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Section 19.1, it shall not be entitled to receive any notice required or permitted to be given under this Agreement, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Section 19.1 regarding the recordation of the Notice Statement are satisfied with respect to Developer and Sam's Club.

19.2 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or by Federal Express, Airborne Express, or similar overnight delivery service, addressed as follows:

Sam's Club: Sam's Real Estate Business Trust  
2001 S.E. 10th Street  
Bentonville, AR 72716-0550  
Attention: President (Sam's Club Store No. 95714)

With a copy to:  
Sam's Real Estate Business Trust  
Attention: Property Management, State of Texas  
2001 S.E. 10th Street  
Bentonville, AR 72716-0550

Developer: Texas Realty Retail Partners, Inc.  
2110 A Boca Raton Drive  
Austin, TX 78747  
Attention: Robert W. McDonald III

With a copy to:  
Lincoln Property Company Commercial, Inc.  
3300 Lincoln Plaza, 500 N. Akard  
Dallas, TX 75201  
Attention: Mr. Robert Dozier

With a copy to:  
Lincoln Property Company Commercial, Inc.  
100 Congress Avenue, Suite 450  
Austin, Texas 78701  
Attention: Wes Babb

With a copy to:  
Jenkins & Gilchrist, P.C.  
1445 Ross Avenue, Suite 3200  
Dallas, Texas 75202  
Attention: William L. Sladek, Esq.

Notices shall be effective upon receipt or refusal. In the event that any person acquires a fee interest in the Shopping Center said person shall be entitled to provide a request for notice to the addressees listed above, which request, in order to be effective, must also be recorded in the county recorder's office in the county in which the Shopping Center is located. Any party shall be entitled to change its address for notice by providing notice of such change and recording a copy of the notice of such change in the county recorder's office in the county recorder's office in the county in which the Shopping Center located. Until such time as the notice of change is effective pursuant to the terms of this Section 19 and until such time as it is recorded as required above, the last address of said party shall be deemed to be the proper address of said party.

20. Consent. The owner of the Sam's Club Tract agrees that for so long as a lease of all or a portion of the Sam's Club Tract is in effect, whenever the consent of the owner of the Sam's Club Tract is required under the Agreement, the owner of the Sam's Club Tract will give such consent only after obtaining Sam's Club's consent.

21. Obligations of the Owner of the Sam's Club Tract. Sam's Club hereby agrees that so long as a lease of all or a portion of the Sam's Club Tract is in effect, it will satisfy the obligations of the owner of the Sam's Club Tract hereunder, and will hold harmless and indemnify the owner of the Sam's Club Tract from any and all loss, damage, expense, fees, claims, costs, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of this Agreement, except for those arising out of the acts or omissions of the owner of the Sam's Club Tract or its employees, agents, contractors or invitees.

22. Counterparts. This Agreement may be executed in one or more counterparts each of which in the aggregate shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year  
first written above.

**SAM'S REAL ESTATE BUSINESS TRUST,**  
a Delaware statutory trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant Vice President  
"Sam's Club"

**TEXAS REALTY RETAIL PARTNERS,  
INC.,** a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ "Developer"

List of Exhibits:

Exhibit A-1 – Site Plan Showing Sam's Club Tract, Developer Tract and Outparcels (current drawing attached; to be updated prior to Closing as required)  
Exhibit A-2 – Site Plan Marked to Show Various Development Details (current drawing attached; to be updated prior to Closing as required)  
Exhibit B – Sam's Club Tract Legal Description (to be attached prior to Closing)  
Exhibit C – Developer Tract and Outparcels Legal Description (to be attached prior to Closing)

STATE OF ARKANSAS §

COUNTY OF BENTON §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 200\_\_\_\_\_, by \_\_\_\_\_, an Assistant Vice President  
of SAM'S REAL ESTATE BUSINESS TRUST, a Delaware statutory trust, on behalf of the  
statutory trust.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

STATE OF TEXAS §

COUNTY OF DALLAS §

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 200\_\_\_\_\_, by \_\_\_\_\_, the  
of TEXAS REALTY RETAIL PARTNERS, INC., a Texas  
corporation, on behalf of the corporation.

(Seal and Expiration Date)

\_\_\_\_\_  
Notary Public

EXHIBIT A-1 TO ECR

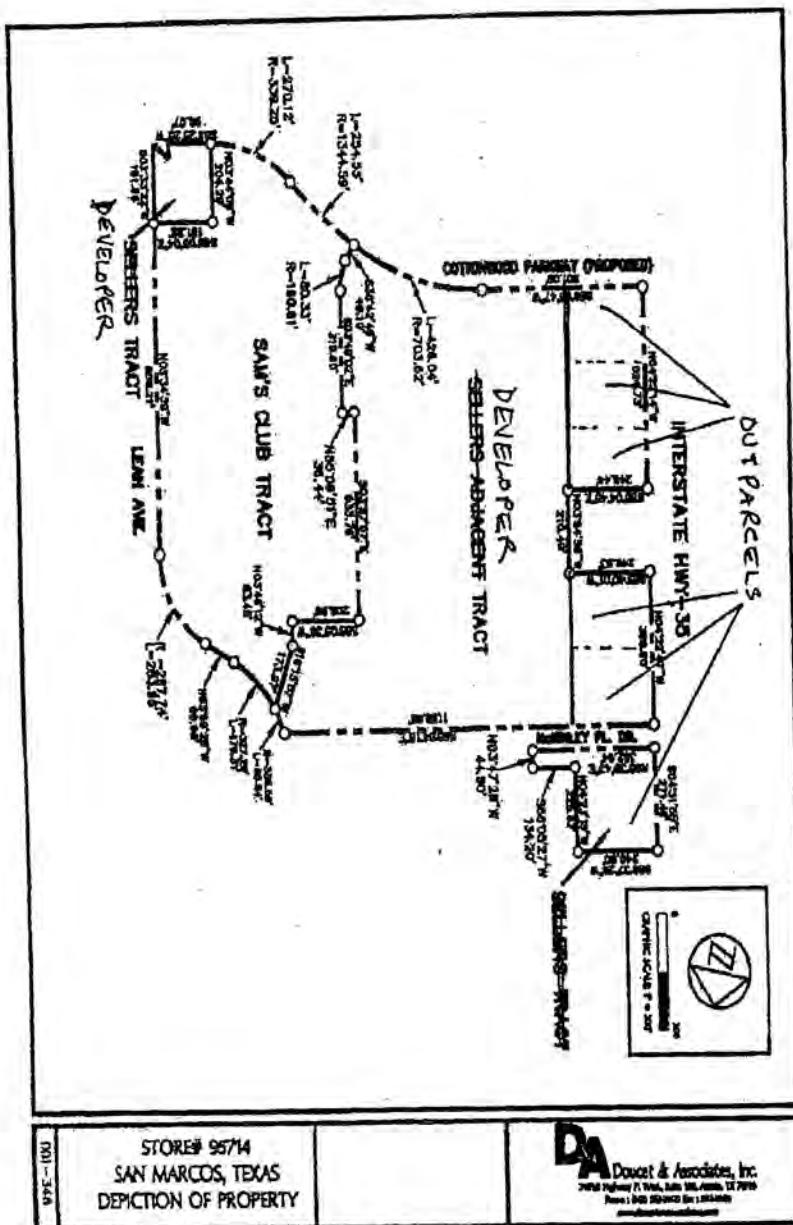


EXHIBIT A-2 TO ECR

